No. 48378-5-II

WASHINGTON STATE COURT OF APPEALS
DIVISION II

DONNA ZINK, APPELLANT

v.

PIERCE COUNTY et al, RESPONDENTS

OPENING BRIEF OF APPELLANT DONNA ZINK

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I. INTRODUCTION

These consolidated cases concern the total lack of application of the Chapter 42.56 RCW Public Records Act (PRA) to an action concerning requests for public records. The PRA, is a strongly worded mandate of the people demanding that members of the public be given **timely access to the "publics" records** in order for the people to remain in control over the instruments they created (RCW 42.56.030). The PRA requires all public agencies in Washington State to provide access to the public records owned, used, created or maintained by that specific public agency unless a specific explicit exemption applies to the requested records even if disclosure of the record causes embarrassment or inconvenience to others. Although the Public Records Act (PRA) recognizes that government transparency can be restricted, under very limited circumstances (RCW 42.56.070(1); RCW 42.56.360), any limitations or exemptions must be very narrowly construed (RCW 42.56.030) and any "other statute" exemptions under RCW 42.56.070(1) applies only to those exemptions explicitly identified in that "other statute."

The trial court in this case was required to follow the mandates of RCW 42.56.540 in order to enjoin the publics records and did not do so. Instead the trial court ignored the requirements of the PRA and enjoined the various records through class certification using an erroneous standard of review based solely on the opinions of other trial court judges across the state, sex offender defense attorneys and treatment provides; the very people who have a stake in keeping the information and documents secret. This is error and an abuse of discretion.

In similar cases, King County Superior Court Cause #13-2-41107-5 SEA, consolidated with Cause #14-2-05984-1 SEA, [1] Zink appealed the declaratory judgment and order of the trial court enjoining both juvenile and adult registration records and information as exempt pursuant to RCW 4.24.550. In that case, just as in this one, the trial court declared RCW 4.24.550 to be an "other statute" exemption and the exclusive means of obtaining sex offender registration records and information. This cause of action was stayed pending the decision of our Supreme Court concerning RCW 4.24.550 as an "other statute" exemption.

On April 7, 2016, our Supreme Court entered a decision mandating that RCW 4.24.550 is not an "other statute" exemption, exempting registration records or information. *John Doe A v. Wash. State Patrol*, 185 Wn.2d 363 (2016) (*Doe v WSP*). In rendering its decision, our Supreme Court made clear that our legislature did not want judges, any more than agencies, to be wielding broad and malleable exemptions *(Id.* ¶9-10). The Supreme Court's decision in *Doe v WSP* overturned all trial court decisions concerning sex offender registration records and information; including these consolidated causes of action currently before the court. As the Supreme Court has determined sex

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[1] The parties listed as Plaintiffs in King County Cause #13-2-41107 SEA are "John Doe A, **a minor** by and through his legal guardians Richard Roe and Jane Roe; and John Doe B, a married man; as individuals and on behalf of others similarly situated."

The parties listed as Plaintiffs in King County Cause #14-2-05984-1 SEA are "John Doe C, **a minor** by and through his legal guardians Richard Roe C and Jane Roe C; and John Doe D, **a minor** by and through his legal guardians Richard Roe D and Jane Roe D, John Doe E and John Doe F; as individuals and on behalf of others similarly situated.

offender registration records and information is not exempt and must be released upon demand, this court should reverse the trial courts orders preventing the release of any and all registration records and remand back for the permanent, preliminary and temporary injunctions to be dismissed.

Therefore, based on our Supreme Court's decision in *Doe v. WSP*, the Zink prevailed on the issue of release of the records containing sex offender registration information and must be given access to all records being withheld based on RCW 4.24.550. Further, the only records still at issue in this appeal are the SSOSA and SSODA evaluations previously determined to be sentencing documents by our Supreme Court and not exempt under the PRA. *Koenig v. Thurston County*, 175 Wn.2d 837, ¶31, 287 P.3d 523 (2012).

These causes of action also involve secrecy in our judicial system through use of pseudonym or false identity in place of the true name of litigants. Open administration of justice is a vital constitutional safeguard that may not be overridden to seal or redact court records except in the most unusual of circumstances. *Hundtofte v. Encarnación,* 181 Wn.2d 1, 330 P.3d 168 (2014). In this cause of action, the trial court ordered all Plaintiffs to allowed to file litigation in complete secrecy such that even the court does not know the true identity of the party of interest, cannot verify the accuracy of the "factual" evidence of need or even identify whether a true party of interest exists.

In addition to our Washington State Constitution, CR 4(b)(1)(i), 10(a) and 17(a) demand that every action in the court be prosecuted in the name of the real party in interest. An affidavit filed under an assumed identity does not identify the "real party in interest" and is of no legal value. Without knowing the identity

of a party the trial court has no way to verify the accuracy of the complaint or whether the person filing litigation has any actual interest in the case. If the party filing the action has no true interest in the cause of action the court has no jurisdiction.

Zink, as a member of the general public and as an individual has right to know the party summoning her into court. Without that knowledge a trial court has no way to establish whether a party bringing action under RCW 42.56.540 has established they named in or the records specifically pertains to them. Simply saying that the person is named in the record is not good enough. The law requires that an affidavit be submitted as evidence.

Finally, this case is about a class actions to enjoin an entire class of records. Not only does this amount to a judicial exemption of public records, in violation of the separation of powers doctrine, without knowing the identity of the class representative, the trial court has no way to verify that they are representative of the class.

Although, as in Federal law, there are circumstances where a party is allowed to seal court records such that the parties name is unknown to the public, the party must still provide their name and apply court rules and established case law to determine whether the party has a right to secrecy in our judicial system. The entry of the Plaintiffs by the court clerk was error. The complaint and summons should have been rejected as deficient and Respondents should have been required to file motion and argue proper sealing of the court records in order to hide their identity. The trial court has not only committed error of law, the trial courts' decision that the court did not need to know the

identity of a litigant is a violation of our Washington State Constitution and well established court rules as well as case law.

Finally, Zink requests this court to review the trial court's decision that a class action could be certified under the strongly worded PRA. RCW 42.56.540 specifically states that only a party named in the record or to whom the record pertains can initiate an action to enjoin the production of a public record. By allowing class action to prevent the release of an entire group of records of a particular type regardless of whether the person named in the record has requested that record to be enjoined, the trial court is ignoring the language set forth by our legislature. Under the clear and unambiguous language of the PRA, the only person who can enjoin a public record must be named in the record to be enjoined or a specific record must pertain to them. Trial courts interpret the law. By certifying a class of any and all persons named in a particular class of records, the trial court is creating a judicial exemption and violating the separation of powers doctrine.

II. ASSIGNMENTS OF ERROR AND ISSUES ON REVIEW

1. Order Granting Dismissal of Zink's Counterclaims Pursuant to CR 56

a. Does a requester have a legal right pursuant to RCW 42.56.550 to request judicial review of an agencies actions concerning the use of RCW 42.56.540, notification of third parties, in responding to requests for access to public records?

b. Is an agency required to identify an exemption pursuant to the PRA, RCW 42.56.050 and 42.56.520, in order to notify third parties of a request for public records pursuant to RCW 42.56.540 (FOF IV.2 - CP 2674-76)?

c. Is delay in release of public record to notify third parties considered an action and/or final action by the agency in response to a request for access to public records (FOF II.4 - CP 2672)?

d. Is an agency required to provide an exemption log for records being withheld in part or in their entirety at the time the records are delayed by the agency to notify third parties (FOF II.4 - CP 2672: FOF IV.2 - CP 2674-76)?

e. Can an agency withhold exemption logs until production of all records requested is finalized (FOF II.4 - CP 2672)?

f. Does RCW 42.56.240(8) exempt from production to any member of the public, including through third party notification, a requester's information (including name, address and e-mail address) if the request is for the purpose of accessing information concerning individuals registered as sex offenders on the statewide unified sex offender notification and registration program under RCW 36.28A.040(6)?

g. Are their genuine issues of material fact which preclude the trial court from dismissing Zink's claims under summary judgment (CR 56)?

h. Does a court ordered injunction of records preclude daily penalties for wrongful withholding of records if an erroneous injunction is overturned on appeal (FOF III(1)(a-d) - CP 2672-74)?

i. The evidence **does not support** the following trial court's findings, conclusions and orders:[2]

   1. Zink's request of November 25, 2014, was a follow up request (FOF I.1 - CP 2671);
   2. Zink" request for the third party list was an informal request (FOF I.1 - CP 2671);

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[2] Zink has pared down the trial court's verbose findings, conclusions and orders being challenged in these consolidated cases in order to decrease the number of pages contained in her opening brief (see Commissioner Schmidt on September 9, 2016). Zink clarifies that all of the trial courts findings, conclusions and orders are being challenged even if not specifically mentioned or erroneously omitted in editing the document and should not be considered verities.

3. As many as 250,000 records were at issue in responding to the request or that this finding was relevant (FOF I.4 - CP2671);
4. Pierce County Sheriff's Department (PCSD) initial five-day response was adequate (FOF I.5 - CP 2671);
5. PC appropriately gave third party notice pursuant to RCW 42.56.540 and PCC 2.04.040 (FOF II.1 - CP 2671);
6. PC was acting in good faith (FOF II.2 - CP 2672);
7. PC appropriately included Zink's public record request as an attachment to the third party notification letters without redaction (FOF II.3 - CP 2672);
8. PC was not legally required to provide an exemption log to Zink when they delayed release of the requested records in order to notify third parties (FOF II.4 - CP 2672);
9. The facts entered under section III.1(1)(a-d) - are relevant to the question of summary judgment dismissal under CR 56 and the they show there is no genuine issue of material fact FOF III(1)(a-d) - CP 2672-74);
10. PC's production of the Offender Watch databases for all level 2 and 3 and noncompliant level 1 offenders whose last names begin with the letter A or B were properly redacted (FOF IV.1 - CP 2674);
11. PC's response and first installment included all records responsive to Zink's request for all registered sex offenders whose last names begin with A or B (FOF IV.1 - CP 2674):
12. PC was not required to produce an exemption log identifying the records being withheld in their entirely when they denied the release the records pertaining to registered sex offenders whose last names started with A or B (FOF IV.1 - CP 2674);
13. PC produced all records responsive to Zink's request concerning sex offenders registered in PC on various specific dates (FOF IV.2 - CP 2674);

14. PC properly redacted and noted exemptions in exemption logs, any errors were due to unintentional oversight and not bad faith. (FOF IV.3 - CP 2675);
15. PC was not required to produce exemption logs prior to review of records and the closing of an agencies response to a request. (FOF IV.4 - CP 2675);
16. PCSD was acting in good faith (FOF IV.5 - CP 2675);
17. Zink's counterclaim does not bring a cause of action for timeliness (FOF IV.5 - CP 2675);
18. Zink narrowed and clarified her PCSD record request in pleadings submitted in court limiting the basis for Zink's count claims (FOF IV.6 - 2676);
19. PCSD has no database or list of registered sex offenders (FOF V.1 - CP 2676);
20. PCSD produced the only database available since Zink requested either a list or database (FOF V.2 - CP 2676);
21. Zink was required to ask for an in-camera review in response to PC's motion for summary judgment dismissal and failed to do so (FOF V.3 - CP 2677-78);
22. PCSD was not required to produce an exemption log at the time it sought a declaratory action regarding the juvenile sex offender criminal records (FOF V.4 - CP 2678);
23. Production of the juvenile sex offender criminal records had not been finalized and an exemption log identifying all records being withheld in their entirety is not required until production is finalized (FOF IV.4(1) - CP 2675);
24. Zink was made aware of the claimed exemptions as evidenced by the court findings and her appearance at hearings (FOF IV.4 (2)- CP 2675);

25. Zink had notice and the ability to challenge the exemptions claimed (FOF IV.4(2) - CP 2675);
26. There was no improper withholding of documents by PCSD in production of the records requested by Zink (FOF V.4 - CP 2678);
27. Zink's did not request victim impact statements, SSOSA and SSODA evaluations, registration records and a list or database from PCPAO on October 3, 2014 (CP 296-97: FOF VI.1 - CP 2678);
28. There are no material facts or genuine issues of law needing resolution in the trial court and Zink's counterclaim is without merit (FOF VI.2 - CP 2677);
29. PCPD acted appropriately in refusing to respond in any fashion except US postal service despite the fact their responses were sent to the wrong US postal address and PC never followed up to find out why their responses were returned (FOF VII.1 - CP 2678);
30. PCPD has a right under the PRA to refuse to provide electronic contact information for their public records officer or respond via e-mail if requested by the requester despite the fact PC has the equipment, software and capability to respond and provide records electronically (FOF VII.1 - CP 2678);
31. Zink's requests were unclear and she never responded to PCPAO's request for clarification (FOF VII.2 - CP 2678);
32. PC's estimate of two weeks to provide information regarding Zink's requests was reasonable (FOF VII.2 - CP 2678).
33. PCPD's scanning and fax charges were adequate and met the requirements of RCW 42.56.070(7)(a)(b) and (8); 42.56.080; and 42.56.120 (FOF IX.1 - CP 2678-79: FOF IX.4 - CP 2679);
34. PCPD adequately responded to Zink's requests for clarification and the statement of factors used to determine copy costs for electronic records

and whether any of the requested records were maintained in electronic format (FOF IX.2 - CP 2679: FOF IX.3 - CP 2679);

35. PCPD's. appropriately refused to provide the requested records in electronic format and acted reasonably in closing Zink's request because she refused to pay the copy costs charged by PC (FOF IX.5 - CP 2680: FOF IX.6 - CP 2680);
36. PCPAO's approach to requiring requesters to only communicate via US mail or fax and only providing public records via fax, US mail or CD/DVD are both reasonable and feasible, regardless of the agencies facilities or ability to provide records electronically, because they allow PCPAO to monitor, track requests and control outgoing production (FOF X.1 - CP 2680).
37. PCSD's use of e-mail and Filelocker (cloud) to provide sex offender records does not show that production in this manner was reasonably or technically feasible for PCPD to use these methods of providing records to the public (FOF X.2 - CP 2680);
38. PCPD's claims that there is no requirement that a requester communicate they are in receipt of documents which presents problems for the agency sending the records electronically (FOF X.3. – CP 2681);
39. PCPAO acted reasonably in relying on their experience that when documents are delivered by US mail all undelivered mail will be returned allowing PCPAO to remedy any errors (FOF X.3. – CP 2681);
40. PCPAO followed their own protocols and County Code and were consistent with their method of communication (FOF X.3 - CP 2681);
41. The costs and fees calculated to produce the requested records were reasonably as declared by Ms. Joyce Glass (FOF X.4 - CP 2681);
42. The fact that PCPAO sent all responses to the wrong US postal address and did not follow-up when the documents were returned as undelivered is

immaterial to the PRA issues presented by Zink (FOF XI.1 - CP 2681); and

43. Zink ultimately received the communications and to the extent Zink did not receive the communications in a timely fashion, the error was invited by Zink's failure to make the original request via fax or US postal service (FOF XI.1 - CP 2681).

j. The trial court erred in concluding:

1. RCW 42.56.540 allows public agencies to notify third parties under any circumstances and instruct them to seek resolution of the request with the requester or initiate litigation to prevent release whether an exemption applies to the requested records or not (COL 2 - CP 2682);
2. PC was not violating RCW 42.56.240(8) when they provided thousands of sex offenders, registered by King County on the Washington State Sex Offender Website; RCW 4.24.550(5)(b)(c)(i)(ii) with Zink's name, address, phone number and e-mail address (COL 2 - CP 2682);
3. PC did not improperly withhold public records under the PRA - RCW 42.56, either silently, due to redactions or in their entirety (COL 2 - CP 2682);
4. The cover letter to the production of the Offender Watch database satisfied Zink's request under the PRA and was what was reasonably and technically feasible (COL 3 - CP 2682);
5. Where production is not finalized and responsive records continue to be produced the agency need only provide an exemption log for documents currently being produced that contain redactions and there is no obligation under the PRA to produce an exemption log for any records withheld in their entirety (COL 4 - CP 2682);
6. The method and manner of production used by PCSD fulfilled the purpose of the PRA and RCW 42.56.100 (COL 4 - CP 2682);

7. Standalone claims for improper exemption logs do not provide for daily penalties (COL 5 - CP 2682);
8. To the extent PC did not properly provide redaction logs the only payment due is the costs associated to bring the claim to recover a proper exemption log as Zink is pro se (COL 5 - CP 2682);
9. Upon filing of a detailed affidavit outlining Zink's costs, the court will review a motion for costs (COL 5 - CP 2682);
10. Zink narrowed her request to PCSD by her filings in this court (COL 6 - CP 2682).
11. Zink understands the legal issues in this matter since she was a party to the litigation, brought an action challenging PC's responses, on notice of what records were temporarily enjoined from production by PCSD, knew the legal authority in support of that order and had objected and continues to object to the legal sufficiency of those exemptions as highlighted in her counterclaim (COL 7 - CP 2682-83);
12. Under Hobbs, production is not final or ripe for review in this cause of action (COL 8 - CP 2683);
13. PCPAO cost estimate was reasonable (COL 2 - CP 2683);
14. PCPAO was reasonable and technically feasible not to respond or provide records in the requested format even though PCSD was able to provide records in the format requested (COL 3 - CP 2683);
15. PC properly and timely responded to Zink's requests and any error was clerical only, insignificant and caused by Zink since she refused to comply and communicate as instructed (COL 4 - CP 2683); and
16. Any other claims which are unspecified as to which agency they pertain to are unsupported both factually and legally against PCPAO (COL 5 - CP 2683).

k. The trial court erred entering summary judgment dismissal and orders:

1. Granting PC motion for Summary Judgement dismissal of Zink's cross claims for judicial review of PC's actions in responding to PRA requests (Order 1 - CP 2683);
2. Denying Zink's request for a continuance of the hearing (Order 2 - CP 2683);
3. Dismissing Zink's cross claims for judicial review of PC's actions pursuant to RCW 42.56.550 with prejudice (Order 3 - CP 2684); and
4. Ordering each party to bear its own costs and fees, with the exceptions of the costs incurred to obtain a proper redaction log for the PCSD April 14, 2015, production which was remedied on August 12, 2015 (Order 4 - CP 2684).

2. Summary Judgment Dismissal

a. The trial court erred and abused its discretion in finding:
   1. that there were no genuine issues of material fact that warrant a trial in this case (CP 2635);
   2. Zink is not entitled to entry of an order of dismissal (CP 2635);
   3. The trial court erred in ordering the motion of John Doe G to be granted (Order - CP 2635); and
   4. The trial court erred in denying Zink's motion for dismissal of these consolidated cases (Order - CP 2635).

3. Use of Pseudonym[3]

Order Pertaining to John Does L, M, N and O entered December 30, 2014.

a. Is use of pseudonym or false identity to obscure the true party of interest a sealing of court records and a violation of the Washington State Constitution Art. 1 § 10?

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[3] Findings of Fact (FOF), Conclusions of Law (COL).

b. Is the trial court required to know the true identity of the parties of interest pursuant to CR 4(b)(1)(i); 10(a) and 17(a)?
c. Did the trial court err in not following the strict mandates of GR 15 and the Ishikawa Factors in issuing orders sealing court records?
d. Does the evidence provided support the facts and conclusion of the trial court that absent sealing of court records to obscure the identity of Plaintiffs, John Does, actual and substantial harm would occur?
e. The trial court erred and abused its discretion in finding;
    1. Plaintiffs are allowed to proceed under a pseudonym if the need for anonymity outweighs the public interest in access to their identities (FOF 1 - CP 2572: Order - CP 2607: FOF – CP 2629);
    2. Forcing Plaintiffs to disclose their identities to exercise their right under the PRA to enjoin release of personally identifying information would eviscerate their ability to seek relief (FOF 2 - CP 2573);
    3. Plaintiffs have demonstrated a significant risk of physical, mental, economic, and emotional harm if their identities are disclosed. (FOF 3 - CP 2573);
    4. The public's right to know the proceedings will not be compromised apart from its ability to ascertain the names of the individual Plaintiffs, which have little bearing on the dispute or its result (FOF 4 - CP 2573);
    5. Defendant is not prejudiced and Plaintiffs' interest in proceeding anonymously outweighs the public interest in knowing their names (FOF 5-6 - CP 2573);
    6. Permitting Plaintiffs to proceed in pseudonym is the least restrictive means to protect their interests (FOF 7 - CP 2573); and
    7. Plaintiff are allowed to proceed under the pseudonym throughout the pendency of this action (Order - CP 2573 Order – CP 2607: Order – CP 2630).

4. Class Action Certification

Order Pertaining to John Does D, L, M, N and O (#14-2-14293-1) entered December 30, 2014.

a. Can a trial court certifying a class of person under the strict requirements of RCW 42.56.540 in order to exempt an entire body of records under the Public Records Act (PRA) (RCW 42.56.540)?

b. Do Plaintiffs meet the requirements for certification of a class pursuant to CR 23?

c. Did the trial court err in relying on other trial court decisions to determine whether to certify various class(es) of sex offenders?

d. The trial court erred and abused its discretion when it:

   1. Certified classes of Level I, II and III sex offenders who are named in registration forms, a registration database, or SSOSA and SSODA evaluations in the possession of Pierce County and classified as sex offenders at risk level I, II and III who are compliant with the conditions of registration under RCW 42.56.540 to prevent the release of all requested records. (CP 2576; 2578: CP 2592);
   2. Found representative class members are registered with Pierce County as Level I, II and III sex offenders without knowing the true identity of the representative party (FOF 1 – CP 2593).
   3. Found classes of persons could be certified to enjoin public records from access to the public under the strict criteria of the Public Record Act (PRA) RCW 42.56.540 (CP 2577-78)
   4. Determined the Certified Classes are so numerous that joinder of all members is impracticable as the proposed classes in this case number in the hundreds perhaps thousands (FOF 1 - CP 2577).
   5. Found there are numerous common questions of law and fact, including be not limited to whether RCW 4.24.550 is an "other statute" exempting the production of compliant level I, II and III sex offender registration records

from the PRA and whether dissemination of those records to a member of the public would cause significant harm and would not be in the public interest (FOF 2 - CP 2577).

6. Found all representative Plaintiff's claims are typical or the proposed class when the trial court did not know the identity of any of the Plaintiffs and could not verify they were representative of the classes (FOF 3 - CP 2577);
7. In appointing John Doe D, L, M, N and O will fairly and adequately protect the interest of the Class, and the individual Plaintiff have no interests adverse to or conflicting with the members of the proposed Class without knowing the true identity of John Doe L, M, N and O (FOF 4 - CP 2577);
8. The trial court erred and abused its discretion in finding that Certification is appropriate because Defendant has acted or refused to act or failed to perform a legal duty on grounds generally applicable to the Class and final injunctive or declaratory relief will be appropriate with respect to the Class aa a whole (FOF 5 - CP 2577).

e. The trial court erred and abused its discretion in ordering

1. The class to be defined as "[a]ll individuals named in registration forms, a registration database, or SSOSA, or SSODA evaluations in the possession of Pierce County and classified as sex offenders at Risk Level I, II or III, are compliant with registration (Order 6 - CP 2577-78);
2. The trial court erred and abused its discretion in appointing John Doe D, L, M, N, and O as Class Representative (Order 8 - CP 2578).

5. Permanent Injunction

Orders Granting Permanent Injunction to John Does L-O and the Class of All Compliant Level I Registered Sex Offenders; John Doe G a Level III Registered Sex Offender; John Doe C, a Level I Registered Sex Offender; Pierce County Enjoining All Juvenile Sex Offender Records; and John Doe D and the Classes of Level II and III Registered Sex Offenders

a. Did the trial court err and abuse its discretion when the court did not use the mandatory requirements of RCW 42.56.540 to enjoin the requested records?

b. Did the trial court err in enjoining the requested records for a classes of Level I, II and III sex offenders under RCW 4.24.550 and 70.02.250?

c. Did the trial court err in finding that access to the SSOSA and SSODA evaluations by the public would harm victims as well as the sex offender program when neither the victim nor the agency claimed any harm?

d. Did the trial court err in finding a person not named in a specific record or to whom the record specifically pertains can enjoin the records of another person under the strict mandates of RCW 42.56.540?

e. Did Plaintiffs' meet their burden of proof that the SSOSA and SSODA evaluation are exempt and that they will suffer actual substantial harm if the public has access to the records?

f. Did the trial court err in finding that the decision in *Koenig 2012,* by our Supreme Court was not the controlling legal authority concerning controlling the issue of whether SSOSA evaluations are sentencing documents and are not exempt from access by the public?

g. Did the trial court err in refusing to dismiss all actions under summary judgment for lack of a specific explicit exemption?

h. Did the trial court err in relying on other trial court decisions to determine whether the records were exempt and should be enjoined and ignoring decision of our Supreme Court?

i. The trial court erred and abused its discretion in finding:

    1. Zink's request was originally made only to PCSD on October 6, 2014 (CP 296-97);

2. Zink's complaint limited to only certain documents requested from any department of PC; discernibly PCPAO and PCSD (FOF 2 - CP).
3. Zink's request of November 25, 2014, to the PCPAO and PCSD was not at issue in this action (FOF 3 - CP 2665).
4. The requested records are only in hard paper copy and responsive documents requiring extensive review for applicable record exemption is a factor in determining whether the records are exempt or whether PC has right to enjoin the requested records. (FOF 4 - CP 2665).
5. Zink requested records not found in the juvenile court file, "highly sensitive information" concerning juveniles or any of the records listed in finding 5 (FOF 5 - CP 2665-66).
6. Chapter 13.50 RCW afforded confidentiality of juvenile justice agency records and information including SSODA and registration information (FOF 6 - CP 2666).
7. Pierce County had at all times acted in good faith in responding to Zink's request (FOF 7 - CP 2666);

j. The trial court erred in concluding:

1. Zink requested records not found in the juvenile court file that are "highly sensitive information" concerning juvenile convictions (COL 3 - CP 2666-67);
2. RCW 13.50 prohibits the disclosure of sentencing and registration records of juvenile sex offenders and juvenile conviction records (COL 4 - CP 2667); and
3. Zink needed to request the court to release the records under RCW 42.56.210 and failed to make a showing that she is entitled to release of the records under RCW 42.56.210 (COL 5 - CP 2667).

k. The trial court erred and abused its discretion in ordering PC to redact from the juvenile offender documents prior to release, the family name, residential address files, court case numbers, photographs, date of birth or any other

information that could reasonably be expected to identify the juvenile or the juvenile's family (Order - CP 2667).

l. The court erred finding:

1. Information concerning uncharged conduct, victims and potential victims is highly personal or medical information (FOF 3 - CP 2640);
2. A SSOSA evaluation requires an offender to disclose highly sensitive personal and medical information (FOF 4 - CP 2628: FOF 3 – CP 2640: FOF 4 – CP 2654: FOF 2 – CP 2698);
3. The requested records are exempt because SSOSA treatment has been recognized for successfully identifying and treating offenders (FOF 4 - CP 2628;:FOF 3 – CP 2640: FOF 4 – CP 2654: FOF 2 – CP 2698);
4. Personal information of those convicted of sex offenses, including their names, current and complete residential addresses, photographs, employers, schools and information about their criminal conviction are exempt from disclosure. (FOF 3 - CP 2654: FOF 3 - CP2687);
5. The trial court erred in finding John Doe C, D, G, L, M, N and O are Level I, II or III sex offenders who are or were compliant with all registration requirements for all required times, who all reside in Pierce County and who are named in the requested records (FOF 5-6 - CP 2287: FOF 4 – CP 2640; FOF 5 – CP 2654);
6. John Doe G participated in a SSOSA evaluation, but he did not seek or receive a SSOSA sentence (FOF 6 - CP 2640);
7. John Doe G's SSOSA evaluation, which is not contained in his public record criminal file, can be enjoined under RCW 42.56.540 (FOF 7 - CP 2640);
8. John Doe G's true identity has been revealed to Pierce County (FOF 10 - CP 2641);
9. Zink's publication of records on a public website is relevant to the issue of exemption and injunction of public records (FOF 14 – CP 2641: FOF 9 – CP 2655: FOF 9 – CP 2688);

10. The trial court erred in certifying a classes of Level I, II and III sex offenders to permanently enjoin public records from release to the public (FOF 13 – CP 2655: FOF 13 - CP 2688).

11. Representative members of the various classes are level I, II and III sex offenders named in the requested records or to whom the requested records specifically pertain (FOF 14 – CP 2655-56: FOF 1414 - CP 2688);

12. Plaintiffs submitted credible evidence of the irreparable harm that will result from blanket or generalized disclosure of the requested records (FOF 20 – CP 2642: FOF 23 - CP 2644: FOF 15 – CP 2656: FOF 15 - CP 2689: FOF 10-12 – CP 2699-2700: FOF 14 - CP 2702);

13. That sex offender information must be enjoined under RCW 42.56.540 in order to protect victims when no victim was notified or came forward to request injunction. (FOF 20 - CP 2642);

14. John Doe G has standing to request a document, not maintained by PC, be enjoined under RCW 42.56.540 (FOF 21 - CP 2642);

15. Declarations of treatment providers of sex offenders are relevant to the question of whether the records are exempt (FOF 22 - CP 2643-44).

16. The declarations from "experts" attest to the actual harm disclosure of the records would cause, are credible evidence and shows the public interest is in maintaining confidentiality of in the requested records (FOF 16 – CP 2656: FOF 16 - CP 2689: FOF 13 - CP 2701-02);

17. SSOSA and SSODA evaluations are mental health records (FOF 24 - CP 2644: FOF 17 – CP 2656: FOF 17 - CP 2689: FOF 15 - CP 2703);

18. Blanket disclosure of sex offender records will cause offenders, their victims and their families mental or emotional damage associated with the stigma of disclosure, physical violence, difficulty in finding employment or housing, harassment and ostracism (FOF 26 - CP 2645: FOF 18 – 2656: FOF 18 - CP 2689: FOF 16 - CP 2703).

19. Blanket disclosure of the requested records will undermine the legislature's purpose in creating the SSOSA and SSODA sentencing criteria and jeopardize the success of those who receive SSOSA and SSODA sentences (FOF 19 – 2656-57: FOF 19 - CP 2689-90)

20. Blanket disclosure of the requested records will make it more difficult for Level I, II and III registered sex offenders to safely integrate into their communities and deter individuals from seeking treatment or providing sensitive information for effective treatment (FOF 27 - CP 2645: FOF 19 – CP 2656-57: FOF 19 – CP 2689-90: FOF 17 - CP 2703);

21. Targeted disclosure of sex offender information dilutes the efficacy of disclosures related to individuals who pose a risk to the community (FOF 28 - CP 2645: FOF 20 – CP 2657: FOF 20 - CP 2690: FOF 18 - CP 2703); and

22. Targeted disclosure of sex offender information undermines the carefully crafted legislative scheme differentiating between risk levels (FOF 28 - CP 2645: FOF 20 – CP 2657: FOF 20 - CP 2690: FOF 18 - CP 2703).

m. The trial court erred in concluding:

1. Sex offender registration information, which contain the offender's specific residential address and other information of that type, are exempt under RCW 42.56.230(7)(a) (COL 33 – CP 2646: COL 23 - CP 2704: COL 26 - CP 2705);

2. RCW 4.24.550 is an "other statute which prohibits disclosure of sex offender registration records and sets for a comprehensive scheme for what information is to be provided regarding sex offenders, to whom the information is provided, and under what circumstances the information is to be provided (COL 34 – CP 2646: COL 24 – CP 2657: COL 24 - CP 2690);

3. RCW 4.24.550 limits public requests to a "specific offender" and not to the kind of blanket request for the records of all sex offenders made by Zink (COL 37 - 2647-48: COL 25-27 - CP 2705);

4. RCW 4.24.550 clearly sets forth a legislative intention to limit release or disclosure of sex offender information to the general public and based on *State v. Ward*, 123 Wn.2d 488, 870 P.2d 295 (1994) the Supreme Court relied specifically on these legislative limits as a basis for upholding the constitutionality of the sex offender registration statutes (COL 35 – CP 2647: COL 25 – CP 2657-58: COL 25 - CP 2690);

5. The Legislature exempted Level I, II and III sex offender information of those compliant with registration requirements from blanket disclosure of information to the public in response to a public record request (COL 36 – CP 2647: COL 26 – CP 2658: COL 26 - CP 2691);

6. Sex offender records are exempt from blanket disclosure because they do not fall into the permissive disclosure provisions of RCW 4.24.550 and the agency can only disclose relevant, necessary and accurate information of Level I, II and III sex offenders under certain specified circumstances (COL 27 – CP 2658: COL 27 - CP 2691: COL 27 - CP 2705);

7. Zink's PRA requests categorically do not fall within any of the specified permitted disclosures of sex offender information under RCW 4.24.550(3)(a) (COL 38 - 2648: COL 28 - CP 2658: COL 28 - CP 2691: COL 28 - CP 2706);

8. Doe G's SSOSA evaluation is not a "public record" because there is no evidence that it was created by or that it is held by a public agency (COL 39 - 2648);

9. RCW 4.24.550, RCW 70.02 and RCW 13.50.050 are "other statutes" exempting records from disclosure (COL 24 - 2705);

10. Chapter 70.02 RCW is an "other statue" exempting the disclosure of SSOSA evaluations under the PRA and that SSOSA evaluations are health care records, specifically records of specialized mental health treatment (COL 40 - 2648: COL 29 - CP 2658: COL 29 - CP 2691: COL 29-30 - CP 2706);

11. SSOSA and SSODA evaluations are confidential under Chapter 70.02 RCW (COL 41 - 2648: COL 30 – CP 2658: COL 30 - CP 2691);

12. None of the permitted disclosures for mental health care records in Chapter 70.02 RCW allow for blanket disclosure to a general member of the public with no relationship to the patients, like Ms. Zink vis-à-vis registered sex offenders (COL 42 - 2648: COL 31 - CP 2658-59: COL 31 - CP 2691-92: COL 31 - CP 2706);

13. SSODA evaluations are governed by RCW 13.50.050, are confidential, exempt from disclosure, are not part of the official juvenile court file, and

are psychological reports with a proposed treatment plan (COL 32 - CP 2659: COL 32 - CP 2692);

14. Chapter 13.50 is an "other statute" which exempts disclosure of sex offender SSOSA evaluation under the PRA (COL 33 – CP 2659: COL 33 - CP 2692);

15. Blanket disclosure of the requested records, without reference to the exemption at RCW 4.24.550 or Chapter 70.02 RCW, would substantially and irreparably harm the classes of Level I, II and III sex offenders (COL 34 - CP 2659: COL 34 - CP 2692);

16. Blanket disclosure of sex offender information will cause sex offenders, their victims and families an increase in physical violence, stigmatization, mental and emotional distress, loss of economic opportunity, increased difficulty finding employment, housing and their families, harassment and ostracism (COL 34 - CP 2659: COL 34 - CP 2692);

17. Generalized release of records and sex offender information of class members makes it more difficult for them to safely integrate into their communities (COL 43 - 2649: COL 35 - CP 2659: COL 35 - CP 2692: COL 32 - CP 2706);

18. Blanket disclosure of sex offender records is not in the public interest (COL 44 - 2649: COL 36 - CP 2659:COL 36 - CP 2692: COL 33 - CP 2706);

19. Our legislature carefully created a statute that ties the level of public disclosure to the level of risk posed by an individual offender (COL 36 - CP 2692);

20. Our legislature clearly intended to limit disclosure of sex offender information to the general public to those circumstances presenting a threat to public safety (COL 36 - CP 2659: COL 36 - CP 2692);

21. Blanket disclosure of the names, exact residential addresses and other information related to Level I, II and III registered sex offenders would not advance public safety or governmental interest (COL 37 - CP 2659-60: COL 37 - CP 2692-93);

22. Blanket disclosure of Level I, II and III registered sex offender information will undermine the efficacy of the current system of targeted disclosure (COL 44 - 2649: COL 37 - CP 2692-93);

23. Members of the classes have a clear legal and equitable right to enjoin the release of these exempt records to the general public (COL 45 - 2649: COL 47 - CP 2649: COL 38 - CP 2660: COL 38 – CP 2693: COL 34-35 - CP 2706-07);

24. Members of the classes have a clear and equitable right to have Pierce County recognize the exemptions contained in the statutes (COL 38 - CP 2660: COL 38 - CP 2693: COL 34-35 - CP 2706-07);

25. Sex offender registration forms, SSOSA and SSOSA evaluations are exempt records which are not be subject to disclosure. (COL 46 - CP 2649);

26. Individuals and members of the classes have a well-grounded fear of immediate invasion of their right to privacy in their criminal records (COL 48 - CP 2649: COL 39 - CP 2660: COL 39 - CP 2693: COL 36 - CP 2707);

27. Release of the requested records that name or specifically pertain to the individuals or members of the classes would result in actual or substantial injury (COL 49 - CP 2649: COL 40 - CP 2660: COL 40 - CP 2693: COL 37 - CP 2707);

28. SSOSA evaluations are attorney-client privilege and are exemption pursuant to *Hangartner v. City of Seattle*, 15 Wn.2d 439, 90 P.3d 26 (2004) from production under the PRA (COL 50 - 2649);

29. SSOSA evaluations are work product privilege and are exempt from production under the PRA pursuant to *Sotor v. Cowles Publishing Co.*, 131 Wn. App. 882, 130 P.3d 840 (2006) (COL 51 - 2650); and

30. Level I, II and III registered sex offenders are entitled to the entry of a permanent injunction (COL 52 - CP 2650: COL 38 - CP 2707).

n. The trial court erred and abused its discretion in entering declaratory judgment:

1. Declaring RCW 42.56.070 and 4.24.550 exempt Level I, II and III sex offender registration information, SSOSA and SSODA evaluations (Order 1 – CP 2660: Order 1 – CP 2693: Order 40 - CP 2708);

2. Declaring RCW 4.24.550 to be the exclusive mechanism for obtaining sex offender records and information under the PRA (Order 1 – CP 2660: Order 1 - CP 2693: Order 40 - CP 2708);

3. Declaring SSOSA and SSODA evaluations to be exempt from disclosure under RCW 42.56.070 and Chapter 70.02 RCW (Order 2 – CP 2660: Order 2 – CP 2693: Order 40 - CP 2708);

4. Declaring RCW 4.24.550 provides the exclusive mechanism for public disclosure of confidential medical information without the patient's consent (Order 2 – CP 2660: Order 2 - CP 2693: Order 40 - CP 2708);

5. Declaring SSODA evaluations are exempt from disclosure under RCW 42.56.070 pursuant to RCW 13.50.050 (Order 3 – CP 2660-61: Order 3 – CP 2693-94: Order 40 - CP 2708);

6. Declaring SSODA evaluations are not part of the official juvenile court file and are confidential juvenile records, and therefore can only be released after any and all information that could reasonably be expected to identify the offender has been redacted (Order 3 – CP 2660-61: Order 3 - CP 2693-94);

7. Permanently enjoining and ordering Pierce County not to produce sex offender registration information, SSOSA or SSODA evaluations of any individual or class members in response to Zink's requests for public records unless all identifying information of the type set forth in RCW 42.56.230(7)(a) is removed (Order – CP 2650: Order 4 – CP 2661: Order 4 - CP 2694); and

8. Ordering Pierce County to redact any and all information, including but not limited to the offenders name; the names of family members; address information, such as street address or e-mail address; dates of birth; phone numbers; vehicle registration numbers or title numbers; court case numbers; employer names and addresses; and any personal characteristics, including photographic images, which could reasonably be expected to

identify any class member sex offender (Order 4 – CP 2661: Order 4 - CP 2694: Order 40 - CP 2708).

Order Denying Reconsideration

a. The trial court erred and abused its discretion in denying Zink's request for reconsideration on November 20, 2015 (Order - CP 2713).

III. STATEMENT OF THE CASE

1. Zink's Requests and Responses from Pierce County

October 2014

On October 3, 2014, Appellant, Zink, submitted a public record request to Pierce County requesting all:

- Special Sex Offender Sentencing Alternative (SSOSA) evaluations;
- Special Sex Offender Disposition Alternative (SSODA) evaluations;
- Victim impact statements related to those convicted of sex offenses;
- Registration forms of all sex offenders registered in Pierce County; and
- A list or database of all sex offenders registered in Pierce County.

(CP 296-297; 1143-45; 1612-14; 1977-78; 3039-11).[4] Zink specifically requested the records from both the PC Sheriff's Office (PCSD) and the PC Prosecuting Attorney's Office (PCPAO) as well as other relevant departments in order to obtain all relevant records (CP 1143-44).

Zink specifically requested to communicate via e-mail and that PC e-mailed or fax the records so that no hard paper copies were made; providing PC with the information needed to communicate via e-mail as well as send the records

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[4] Agencies have five business days to respond to a request for public records. Zink send her fax to Pierce County on October 3, 2014.

electronically (*Id.*). PC did not respond via e-mail as requested by Zink even though PC had the capability to do so and responding via e-mail was reasonable and reliable; providing a receipt clearly indicating an e-mail was sent, to whom it was sent as well as the exact time the e-mail was sent (CP 1151-52; 2218 #6).

On October 13, 2014, PCSD responded via US mail to PO Box 263, Zink's correct mailing address, stating that they had received Zink's request and assigning it file #1410029 (CP 1619). PCSD stated they would advise Zink in six to eight weeks of the number of records available (*Id.*). PCSD did not mention a release date for any of the requested records. Zink could find no evidence provided by PC indicating the PCPAO ever responded to Zink's request of October 3, 2014 specifically requesting documents from their department and it is more likely than not, PCPAO did not respond to Zink's initial request to their office.

On October 30, 2014, PC sent third party notice to an unknown number of sex offenders notifying them of Zink's request (CP 298-299; 1634-35; 1982-83). In the notice, PC claimed no exemption (*Id.*) and had no reasonable reason for denying production of the requested records to Zink as required by RCW 42.56.050 "Legislative Intent."[5] In their notification, PC told those notified of the

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[5] "The legislature intends to restore the law relating to the release of public records largely to that which existed prior to the Washington Supreme Court decision in "In Re Rosier," 105 Wn.2d 606 (1986). **The intent of this legislation is to make clear that:** (1) Absent statutory provisions to the contrary, agencies possessing records should in responding to requests for disclosure not make any distinctions in releasing or not releasing records based upon the identity of the person or agency which requested the records, and (2) **agencies having public records should rely only upon statutory exemptions or prohibitions for refusal to provide public records**. Further, to avoid unnecessary confusion, "privacy" as used in RCW 42.17.255 is intended to have the same meaning as the definition given that word by the Supreme Court in

request that the records would be released on November 21, 2014 at 4:00 p.m. if an injunction had not been obtained prior to that time (CP 297; 238).

On October 31, 2014, Zink sent a third request to PCSD which was assigned file #1411005 (CP 1988).

November 2014

On November 4, 2014, PCSD send a letter of clarification via US postal service concerning Zink's request for registration records and the list or database of all sex offenders registered in PC (file # 1410029) (CP 1621-22; 1985-86). PCSD informed Zink that pursuant to PCC 2.04.040(0), the County took action on the request, determined that no exemption applied and sent out third party notice to all affected currently registered sex offenders in PC along with a copy of Zink's request as required by Pierce County Code (PCC) (CP 1621). PCSD stated that due to the large number of sex offenders they would be sending out third party notification in installments and anticipate giving 10-15 business days to respond to the letter. PCSD anticipated this process would take 27 weeks till completion (CP 1621). PCSD stated that they anticipated the first installment of the records responsive to Zink's request would be available the first week of December 2014 (1622). PCSD did not provide an exemption log identifying any records being withheld while third parties were notified (RCW 42.56.050; 42.56.210(3); 42.56.520; 42.56.550).

"Hearst v. Hoppe," 90 Wn.2d 123, 135 (1978)." [1987 c 403 § 1.]. RCW 42.56.050 Intent – 1987 c 403 (emphasis added). RCW 42.56.050.

On November 6, 2014, PCSD wrote to Zink concerning her request of October 31, 2014, (#1411005) requesting copies of third party notification and a list of persons to whom the letters were mailed (CP1988). PCSD stated "[with regard to your request for a list of persons to whom the letter was mailed, we estimate we will need until approximately November 24,th 2014 to provide that material" (CP 1988). PCSD did not provide a list of persons notified of Zink's request for sex offender records and apparently never responded further to this request.

On November 13, 2014, in response to PC's third party notification letter, Pierce County Superior Court Cause #14-2-14293-1 was initiated by four completely unknown parties (John Doe L, John Doe M, John Doe N and John Doe O) (CP 236-55). The Pierce County Superior Court clerk allowed these four parties to file a class action lawsuit for declaratory and injunction relief to enjoin all complaint Level I sex offender records requested by Zink on October 3, 2014 under false identities; summoning Zink into a civil action in Pierce County, in secrecy, forcing Zink to participate or lose her right to access the requested records (CP 256-57) (see below).

On November 21, 2014, in light of PC's refusal to produce the requested records through notification of third parties to initiate an action in the court, Zink submitted a new request for the sentencing and judgment documents which are required by RCW 9.94A.475 and .480 to be kept as public records (CP 1705-7). Zink specifically requested the sentencing and judgment records from both the PCSD and the PCPAO as well as other relevant departments in order to obtain all

relevant records (CP 1705). The request was forwarded to the PCSD and the PCPAO for fulfillment (CP 1151; 1624). This request was designated #137/14-1337 by PCPAO (CP 1709) and file #1412028 by PCSD (CP 1147).

On November 24, 2014, PCSD sent a partial database and a letter to Zink via e-mail (1626; 1991-92). The letter explained the Pierce County Superior Court had enjoined all records, to include the SSOSA/SSODA evaluations, of compliant Level I sex offenders "to Ms. Zink" and therefore in order to comply they are delaying the release of the records pertaining to all compliant level I sex offenders (CP 1627).

PCSD also informed Zink that their previous third party notification letters were only sent to those whose last names started with A or B and that "a second wave of third party notifications" would be release the first week of December (*Id.*). PCSD sent the requested database of registered non-compliant Level I sex offenders whose last names started with A or B; redacting or excising all Level I compliant, Level II and Level III sex offenders from the database. PCSD made clear that all those whose last names begin with A or B now covered by the temporary restraining order issued in the court were removed (*Id.*). PCSD did not provide an exemption log as required by the PRA or any reasonable explanation for notifying third parties other than they wanted to and had that option pursuant to PPC 2.04.040(D).

PPC 2.04.040(D) (CP 1630) clearly states that third parties are only to be notified should a request affect the rights of others. Although PPC ambiguously states that third parties can be notified if there "may be exempt from disclosure,"

the provisions of the PRA are clear and concise. The "right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records" and "agencies having public records should rely only upon statutory exemptions or prohibitions for refusal to provide public records." RCW 42.56.050. Even if the PPC 2.04.040(D) was utilized, it's utilization without identification of an established exemption rather than an imaginable exemption is in opposition to mandatory state statutes and in violation of the PRA; especially in light of the fact that PC argued the records are not exempt to the trial court (711-24; 982-90; 2089-2102; 3070-79; 3194-3204).

Furthermore, the records and information requested is submitted to the statewide unified sex offender notification and registration program under RCW 36.28A.040(6) by PC who is responsible for collecting the information of registered sex offenders for the statewide unified sex offender and PC was prohibited from providing Zink's contact information, including her name, residential address, and email address pursuant to RCW 42.56.240(8).[6] PCSD

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[6] (b) Law enforcement agencies must provide information requested by the Washington association of sheriffs and police chiefs to administer the statewide registered kidnapping and sex offender web site.

(c)(i) Within five business days of the Washington association of sheriffs and police chiefs receiving any public record request under chapter 42.56 RCW for sex offender and kidnapping offender information, records or web site data it holds or maintains pursuant to this section or a unified sex offender registry, the Washington association of sheriffs and police chiefs shall refer the requester in writing to the appropriate law enforcement agency or agencies for submission of such a request. The Washington association of sheriffs and police chiefs shall have no further obligation under chapter 42.56 RCW for responding to such a request.

(ii) This subparagraph (c) of this section is remedial and applies retroactively. RCW 4.24.550(5)(b)(c)

silently withheld the records though their unreasonable actions (*Id.*), violated Zink's privacy rights under RCW 42.56.240(8) and cause intentionally caused Zink harm in order to delay and deny release of the requested records.

On November 25, 2014, Zink e-mailed PCSD and requested to know why she had not received an exemption log concerning the notification of sex offenders registered in PC of her request (CP 1148-49; 1172-73; 1994-95) and objecting to the notification of thousands of convicted felons to tell them she had requested their personal records. Zink stated that PC's actions caused unreasonable delay in release, harassment and intimidation from the third parties notified as well as costly frivolous litigation simply because PC do not want to release non-exempt records and they were using the PRA as a shield to prevent disclosure by forcing a requester to withdraw their request or face threats from convicted felons and continuing costly litigation without any reasonable reason for such a delay, an identifiable exemption or an exemption log identifying any of the records being withheld in their entirety by PC (CP 1149; 1995). Zink requested a list of those notified of her request (CP 3049 para. 8).

On November 26, 2014, PCPAO sent a letter to Zink, via US postal service, addressed to PO Box 623 (CP 1709-11; 1997-98; 2209). Zink's PO Box is 263 (CP 1991). The letter was not delivered and Zink was not contacted at the e-mail address provided. In the letter PCPAO explained that they would not communicate via e-mail since there was no guarantee of timely receipt of e-mails due to spam filters, employee e-mail accounts are not accessible to others and employee e-mail is not monitored during absences (CP 1709). PCPAO directed

Zink to several other departments and stated that is was estimated to take four weeks to get to complete review the requested records for exemptions (CP 1709-10).

December 2014

On December 4, 2014, PCPAO sent a letter to the wrong postal address, requesting clarification of Zink's request for sentencing and judgment documents (CP 1723-24; 2003). That same day, PCSD responded to Zink via e-mail, as requested, acknowledging her request and stating that the person who normally responds, Mr. Seymour, was absent for the day (CP 1152; 3045; 2001; 2005). Zink responded by e-mail, reiterating that she did not need or want paper copies and provided relevant statutes specific to the release of sentencing and judgment documents, requesting PCSD forward the request to correct department if she had requested the records from the wrong department (CP 1143; 3044; 2000).

PCSD contacted Zink and told her that they were getting ready to send out additional notification letters and the only information concerning her were her e-mail, fax and postal address (CP 2238) and PCSD did not see any of her "personal information" on the notification letter sent (*Id.*).

On December 8, 2014, Zink responded that if her information was not exempt or "personal" then PCSD had no valid reason to notify third parties of a request for similar information and stated that her only recourse to their actions was to file litigation in the courts and directing PCSD's attention to RCW 42.56.240(8) (CP 2237).

On December 17, 2014, Pierce County Superior Court Cause #14-2-15100-0 was initiated by John Doe D in response to PC's notification letter by filing a motion for a TRO/Preliminary Injunction under a false identity (CP 2776-99; 1-4). The Pierce County Superior Court clerk again allowed an unknown party to an action to file under a false name, John Doe D, a purported Level III sex offender, and file another class action claim to enjoin all Level II and III sex offenders requested by Zink (CP 2000-12); summoning Zink into another action in Pierce County Superior Court (see below).[7]

On December 23, 2014, PCSD sent the first installment of sentencing and judgment documents in response to Zink's second request (CP 1645). In the attached letter, PCSD stated that the sentencing and judgment documents of Level I sex offenders whose names state with A or B are currently enjoined and would not be released (CP 1646). PCSD did not provide an exemption log identifying the records being withheld in their entirety, the claimed exemption(s) (RCW 42.56.050) allowing for delay in release to notify third parties (RCW 42.56.520) or a statement of how the exemption applied to the requested records as required by the PRA (*State v. Sanders*, 169 Wn.2d 827, 240 P.3d 120 (2010)) [8].

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[7] Zink was unable to determine whether she was ever served notice of this action in the designated clerks papers or the on-line SCOMIS index. Zink filed Pro Se Notice on January 5, 2015 (CP6-7).

[8]On the other hand, the State's interpretation contravenes the PRA's purpose. If the only remedy for a failure to explain is to sue to compel explanation, the agency has no incentive to explain its exemptions at the outset. This forces requesters to resort to litigation, while allowing the agency to escape sanction of any kind. Cf. Spokane Research & Def. Fund v. City of Spokane, 155 Wn.2d 89, 103-04, 117 P.3d 1117 (2005) (refusing to allow agencies to resist complying with the PRA until after a suit is filed without facing a penalty) *Sanders* at ¶42).

That same day, Zink objected by e-mail stating that the sentencing and judgment documents were not exempt under the injunction issued by the Pierce County Superior Court (CP 1651-52) and objecting to the withholding of sex offender records for years without a reasonable reason to do so. Zink cited to the Koenig case and reminded PCSD that agencies refusing to release records are subject to penalties based on the Yousoufian factors and culpability (*Id.*).

On December 31, 2014, PCSD sent a clarification of their previous release and Zink's objections via e-mail (CP 1648). (CP1649-50). PCSD clarified that no records were being withheld from Zink and that Judge Nevin's order enjoining Level I sex offender records did not pertain to Zink's request for sentencing and judgment documents.

January 2015

On January 9, 2015, PCPAO sent another letter to Zink using the wrong mailing address concerning the sentencing and judgment documents (CP 1717-18; 2007-08). PCPAO stated since Zink had not responded to their December 4, 2014, correspondence they were limiting their search to a ten-year time period. PCPAO further stated that the first installment of the records would be available to view free of charge, would cost $.15 per page for hard copies and that PCPAO charged

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The "brief explanation" requirement is one aspect of the "response[s]" referred to in this provision. See RCW 42.56.210(3) 11 ("Agency **responses refusing, in whole or in part, inspection of any public record shall include** ... a brief explanation of how the exemption applies to the record withheld." (emphasis added)) (*Sanders* at ¶44).

[A]n agency's failure to explain its claimed exemptions is relevant to the agency's "lack of strict compliance ... with all the PRA procedural requirements," which may aggravate the penalty for wrongfully withholding public records. Yousoufian v. Office of Ron Sims, 168 Wn.2d 444, 467, 229 P.3d 735 (2010) (Yousoufian V) (*Sanders* at ¶45).

$57.49 per hour for scanning fees (CP 1717). PC did not provide any factors used to determine scanning costs such as the number of pages per minute, the resolution or how many pages could be scanned at one time to indicate how their hourly fee was calculated or indicate whether any of the requested records were originally in electronic format and could easily be produced electronically (CP 1719).

On January 12, 2015, PCSD sent another wave of third party notification to all sex offenders (CP 2010-11). PSCD did not provide an exemption log outlining the exemption being claimed as the need to notify third parties. notifying convicted felons of Zink's request and providing them with her name and contact information, informing those contacted of the current law suits and their status and instructing them to initiate further action in the court or their records would be released on January 28, 2015 (CP 2012).

On January 23, 2015, PCPAO sent another letter to Zink via postal service to the wrong address stating that PCPAO had (CP 1725-27; 2013-14). In this letter, PCPAO stated that the first installment of 1,398 pages of sentencing records were available and that could either be reviewed or she could pay the copy fees as stated (*Id.*). Pierce County did not discuss electronic transfer of the requested records or state whether any of the records were available electronically (CP 1727).

On January 26, 2014, Zink faxed a response to PC stating that she was in receipt of their letter, requesting all electronic copies of the records be sent via e-mail or shared via the cloud, stating that she would review their codes and the

RCW's and get back with them on their charges for scanning and once again requesting PCPAO communicate via e-mail (CP 1729; 2213-14). Zink also requested a copy of the statement of factors used to determine costs charged for electronic copies of records on a CD pursuant to Pierce County Code (PPC) 2.04.070(c).

On January 28, 2015, PCPAO again wrote to Zink sending the letter to the wrong address via US postal service (CP 1733-40). PCPAO sent a copy of their determination of scanning fees (CP 1739) as well as a copy of PPC 2.04.070 (CP 1737-38).

On January 29, 2015, in response to Zink's requests of October 3, 2014 and November 25, 2014 requests for sex offender records, including those of juvenile offenders, Pierce County Superior Court Cause #15-2-05605-6 was initiated by PC to enjoin the release of all juvenile sex offender records (3090-94) (see below).

On January 31, 2015, Zink contacted PC by fax in response to PCPAO's letter of January 28, 2015 (CP 1742). In her response, Zink objected to the charges assessed by PCPAO for scanning of paper copies as being capricious and arbitrary (CP 1742), without approval by any department and based on no factors; a violation of the strict mandates of the Public Record Act (PRA). Zink again objected to PCPAO's refusal to communicate via e-mail, a more efficient, trackable and trustworthy media, and refusal to provide electronic records to her via electronic transfer of some kind (CP 1742).

February 2015

On February 4, 2015, PCPAO responded, thanking Zink stating that her concerns regarding communication, and how costs were calculated were address in prior correspondence (CP 1744). PCPAO stated that Zink's request would be closed unless she sent payment or she came to review the records by February 23, 2015 (CP 1744) and instructed Zink to either mail or fax any questions or clarification to the numbers provided (CP 1745).

On February 11, 2015, PCSD sent third party notification to all Noncompliant Level I sex offender whose last names started with E-G (CP 1656-57: 2016-17) giving them until February 27, 2015 to file for injunction (CP 2017). PCSD also released the entire registration file for Noncompliant Level I sex offenders whose last names began with A-D via "Filelocker" to Zink (CP 1659-60) and sent an exemption log for the release outlining any redactions and the applicable exemption via e-mail (CP 1662-63). Zink did not receive any records of Level I compliant offenders, Level II and III offenders, undesignated registered offenders or an exemption log concerning the withholding of those records.

On February 17, 2015, PCSD e-mailed Zink stating that they are working on the portion of her request for registration records and SSOSA/SSODA records (file #1410029) not covered by an injunction, requested to know if "Filelocker" was acceptable method of transmission and reminded Zink they continued to send out notification letters and provided her with a copy (1664). Upon receipt of the records released, Zink objected to the removal of a photo (1165-1166).

On February 19, 2015, PCSD informed Zink that because the sentencing and judgment documents are not maintained by PCSD, not all of those records would be released by PC (CP 1665) and provided the missing photo PCSD wrongfully withheld (CP 1666)

March 2015

On March 19, 2015, PCSD sent another wave of third party notification to all Noncompliant Level I sex offenders with last names beginning with H-J (CP 1974-75), forwarding a copy of the notice to Zink (CP 1673). PSCD did not provide an exemption log outlining the exemption being claimed as the need to notify third parties (CP 1673-75).

April 2015

On April 14, 2015, PCSD sent notices to Zink that the Noncompliant Level I E-G (CP 1677) and H-J (CP 1678) offender records were available at Filelocker (CP 1680). Zink did not receive any records of Level I Compliant, Level II or Level III sex offender registration records. PCSD did not provide an exemption log for the registration records being withheld pertaining to all Level I compliant, Level II and Level III sex offenders (CP 1674).

May 2015

On May 21, 2015, PCSD sent out another wave of notification letters notifying convicted felons of Zink's request and providing them with her name and contact information, informing those contacted of the current law suits and their status and instructing them to initiate further action in the court or their records would be released on June 5, 2015 (CP 1636-37). No exemption log was provided.

On May 28, 2015, PCSD sent out another wave of notification letters notifying convicted felons of Zink's request and providing them with her name and contact information, informing those contacted of the current law suits and their status and instructing them to initiate further action in the court or their records would be released on June 12, 2015 (CP 1640-1641). No exemption log was provided.

June 2015

On June 4, 2015, PCSD sent out another wave of notification letters notifying convicted felons of Zink's request and providing them with her name and contact information, informing those contacted of the current law suits and their status and instructing them to initiate further action in the court or their records would be released on June 19, 2015 (CP 1639-40). No exemption log was provided.

On June 8, 2014, PCSD sent notices to Zink that the Noncompliant Level I K-M (CP 1682) were available at Filelocker. PCSD provided an exemption log for the partial redaction of the records provided (CP 1683-84). Zink did not receive any records of Level I Compliant, Level II or Level III sex offender registration records. PCSD did not provide an exemption log for the registration records being withheld pertaining to all Level I compliant, Level II and Level III sex offenders.

On June 11, 2015, PCSD sent out another wave of notification letters notifying convicted felons of Zink's request and providing them with her name and contact information, informing those contacted of the current law suits and their status and instructing them to initiate further action in the court or their records would be released on June 26, 2015 (CP 1642-43). No exemption logs

were ever provided for any of the denied and delayed records and Zink is still unsure whether all of the records were provided.

On June 25, 2015, John Doe C filed a motion to intervene in Cause #14-2-14293-1 under a false identity (212-15; 1171-73; 1174-87) and a motion to be allowed to proceed in pseudonym (CP 207-11; 1188-91). John Doe C claims to be a Level I compliant sex offender (CP 1188-1191). Zink filed a waiver of personal appearance and oral argument in responding to John Doe's C's motions (CP 216-20).

On June 26, 2015, Doe C was also allowed by the trial court to intervene (CP 1192-94) and file court documents under a false identity without application of GR 15 or the Ishikawa Factors (CP 224-27).

July 2015

On July 7, 2014, PCSD sent notices to Zink that the Noncompliant Level I sex offender registration records whose last name begins with N-Z (CP 1686-87) were available at Filelocker which completed Zink's request for registration forms, SSOSA and SSODA as well as the database/list of all registered sex offenders. PCSD provided an exemption log for the partial redaction of the records provided (CP 1688). Zink never received any of the records requested concerning Level I Compliant, Level II or Level III sex offenders or an exemption log for any of the records being withheld in their entirety by PCSD or PCPAO all Level I compliant, Level II and Level III sex offenders (CP 1688; 93).

On July 24, 2015, PCSD e-mailed Zink that an upload of all Y to Z sentencing documents and victim impact statements were available to download (CP 1690).

PSCD stated that all juvenile conviction had been removed until the legal review of the subject of the juvenile records was completed (*Id.*). PSCD included an exemption log for the redaction of the documents provided only (CP 1691). PSCD did not provide an exemption log for any other the juvenile records being withheld even though they filed suit pursuant to RCW 42.56.540 to enjoin the records and not a third party (*Id.*).

On July 27, 2015, Zink e-mailed PCSD to request clarification as to whether all sentencing documents had been released by PCSD and to again request an exemption log outlining all of the records being withheld in their entirety (CP 2019-20).

August 2015

On August PCSD verified that they had sent all records for non-compliant level I registered sex offenders (CP 2022) and attached two exemption logs outlining the redaction of the released records (CP) 2023-24). Zink responded stating that their exemption log was inadequate because it did not reflect records being withheld in their entirety by PCSD (2026-27). PCSD did not provide an exemption log identifying any of the records being withheld in their entirety, the exemption allowing for third party notice to prevent the release of the records or explain how their claimed exemption applied to the requested records. To date it is still unknown as to what documents are being withheld in their entirety. For instance, all sentencing and judgment documents were to be released and Zink never received the list of persons receiving

notification letters. Further, according to PCSD's e-mail, only the non-compliant level I sex offender records and information has been released (CP 2027).

a. History in Pierce County Superior Court - Cause #14-2-14293-1

On November 13, 2014, Pierce County Superior Court Cause #14-2-14293-1 was initiated by four completely unknown parties (John Doe L, John Doe M, John Doe N and John Doe O) who were allowed by the court clerk to file a class action lawsuit for declaratory and injunction relief, using false identities; summoning Zink into this action to enjoin the release of the records she requested on October 3, 2014 (CP 256-57). In their complaint, the four unknown parties claimed to be Level I Registered Sex Offenders who were compliant at all times with registration requirements and requested to be allowed to represent a "Class" of similarly situated sex offenders (CP 236-55).

The declarations and affidavits of John Doe L, N and O,[9] required to be filed in an action to enjoin records pursuant to RCW 42.56.540[10] and in supporting their request to act as class representatives were filed under false identities (Civil Rule (CR) 23) (CP 419-30).

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[9] An affidavit for John Doe M was not found in the record.

[10] The examination of any specific public record may be enjoined if, **upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains**, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions. RCW 42.56.540 (emphasis added).

On November 13, 2014, Does L-O, filed a motions for certification of a class of Level I sex offenders (CP 250-270; 271-277; 291-430) and preliminary injunction to enjoin the requested records from production (CP 278-90; 431-570) and a motion to proceed in pseudonym on November 14, 2014 (CP 88-97; 571-710). Zink was served notice on the evening of November 14, 2014, (CP 902; 98-99). On November 18, 2014, Zink objected to the hearing being held on November 21, 2014, due to lack of proper notice (CP 903).

A response to all three motions was filed by PC on November 19, 2014 (CP 711-724) with Does filed their reply on November 20, 2014 (CP 725-33; 734-47; 740-887; 888-904). The Honorable Jack Nevin was assigned to the case and heard argument at the November 21, 2014 hearing. The issue of notice to Zink was brought up and the hearing was postponed to December 12, 2014. The trial court issued a Temporary Restraining Order (TRO) preventing the release of the records pending the decision on the preliminary injunction (CP 907-908).

On December 2, 2014, Does L-O submitted an amended complaint (CP 910-926). Zink filed pro se notice and an answer to the Does Class Action Complaint on December 5, 2014 (CP 927-948as well as a response to Does L-O's motion for permission to proceed in pseudonym on December 9, 2014 (CP 102-14) and responses to Does L-N's motions for Preliminary Injunction (CP 130-44) and Class Action (CP 115-29) on December 10, 2014. Does L-O replied December 11, 2014, to the motions for use of pseudonym (CP 145-53), class certification (CP 958-65) and to preliminary injunction (CP 949-57).

Oral argument was presented by the parties on December 12, 2014, and orders allowing Does L-N to file the action under a false identity (CP 2572-74), an order certifying a class of compliant Level I sex offenders (CP 2576-79) and an order enjoining the requested records under a preliminary injunction pursuant to CR 65 and RCW 42.56.540 (CP 2581-86) were entered by the trial court on December 30, 2014.

In allowing Does L-N to proceed under use of the pseudonyms, the trial court did not use GR 15 or the Ishikawa Factors as required in sealing court records (CP 2572-74). In certifying a class of Level I compliant sex offenders, the trial court found that Does L-N were representative of a class despite not knowing their identities or whether there were true parties of interest (CP 2576-79) and in issuing a preliminary injunction, the trial court very loosely applying the mandatory requirements of RCW 42.56.540 (CP 2581-86).

b. History in Pierce County Superior Court – Cause #14-2-15100-0

Pierce County Superior Court Cause #14-2-15100-0 was initiated by John Doe D on December 17, 2014. John Doe D, a purported Level III sex offender, was allowed to file motion for a TRO/Preliminary Injunction (CP 2776-99), followed by a complaint on December 19, 2014 (CP 2000-2012) under use of pseudonym as well as a motion to shorten the time for hearing a TRO (1-4; 5).

On December 22, 2014, the Honorable Ronald E Culpepper was assigned to the case and issued a TRO (CP 2813-15). Doe D, filed an amended complaint on December 23, 2014 (CP 2816-28).

On December 30, 2014, a motion was filed for preliminary injunction (CP 2829-43). On December 30, 2014, the trial court certified a class of Level I sex offenders (CP 975-978), granted permission for Does L-O to proceed in pseudonym (CP 979-981 and ordered the preliminary injunction of the Level I sex offender records (CP 968-74). On December 31, 2014 the trial court extended the TRO (CP 2887) issued on December 22, 2014, was filed in the court (CP 2867). On January 2, 2015, Doe D filed another motion for TRO (CP 2868-81) and a declaration (CP in support (CP 2881-2907). On January 5, 2015, Doe D filed a declaration from the Washington Association for the Treatment of Sexual Abusers (WATSA) (CP 2912-24). The trial court issued another order extending the TRO (2908-11). Zink filed a pro se notice of appearance (CP 6-7).

On January 8, 2015, Doe D filed motion to have the court certify a class of Level II and III sex offenders (CP 2925-41; 2942-47) and an addendum to his motion for preliminary injunction (CP 2948-2951). No motion was ever filed for use of pseudonym despite the fact that all court documents reflect use of the pseudonym John Doe D in place of the true identity of Plaintiff.

On January 14, 2015, Zink filed response to Doe D's motions for preliminary injunction (CP 2952-64) and class certification (CP 2965-75; 2076-3024). PC filed a response to Doe D's motion for preliminary injunction (CP 3022-35) as well as declarations from Tom Seymour (3036-45).

On January 15, 2015, oral argument was heard on the motion for class certification of Level II and III offenders and injunction of Level II and III sex offender records before the Honorable Jerry T. Costello (RP (January 16, 2015)).

After hearing oral argument, the trial court granted the motion for class certification and portions of the preliminary injunction, enjoined the registration records for the classes of Level II and III sex offenders but not the SSOSA evaluations of the Level II and III adult convicted sex offenders ((*Id.* 1616-17:13). Judge Costello also enjoined the sentencing and judgment documents of the juvenile sex offenders (Id. 18:24-20:24). Doe D filed the replies to the responses filed concerning the motion for preliminary injunction (3058-66) and class certification (CP 3051-57). PC also filed a second declaration of Tom Seymour (CP 3046-59) and on January 16, 2015, Doe D filed a declaration from Brad Meryhew in support of his motion for preliminary injunction (CP 8-30).

On January 20, 2015, the trial court signed the order granting Doe D's motion for preliminary injunction (CP 2588-2590; 3067-69). Judge Costello's order encompassed the juvenile offender sentencing and judgment documents requested by Zink (CP 2589).

On February 17, 2015, PC filed an answer to Doe D's complaint and request for declaratory relief (CP 982-90; 3070-78) motioning the trial court to consolidate the cases on February 18, 2015 (CP 991-94; 995-1031). On February 20, 2015, Zink objected to the consolidation as it confounded already complicated standalone causes of action involving in depth and lengthy pleadings (CP 154-62). On February 25, 2016, Does L-O filed their response to PC's motion, agreeing that the cases should be consolidated (CP 163).

On February 26, 2015, the trial court certified two classes of Level II and III sex offenders, appointing Doe D as class representative to both classes on (CP

3079-83). Pierce County filed a reply to Zink's objections to consolidation of the cases (CP 164-67). On February 27, 2015, PC's motion to consolidate Cause #14-2-14293-1, 14-2-15100-1 and 15-2-05605-6 was granted (CP 1032-34; 1035-37; 3095-97).

In the order entered on November 3, 2015, in the Pierce County Superior Court, pertaining to the Level II and III classes of sex offenders represented by John Doe D, the Honorable Philip Sorenson ordered the injunction of all Level II and III sex offender records to include the SSOSA and SSODA evaluations (CP 2707-09). This is in opposition to a previous oral ruling and orders entered in the Pierce County Superior Court by the Honorable Jerry Costello (RP (January 16, 2013) 17:6-13) denying injunction of any adult Level II and III sex offender's SSOSA and SSODA evaluation; with the order denying the injunction entered on January 20, 2015 (CP 2589:17-19).

c. History in Pierce County Superior Court - Cause #15-2-05605-6

Pierce County Superior Court Cause #15-2-05605-6 was initiated in the court by PC on January 29, 2015, to enjoin the release of all juvenile sex offender records requested by Zink to include the sentencing and judgment documents currently enjoined by order in cause #14-2-15100-0 as previously discussed (3090-94).

In their complaint, PC stated that as a result of Zink's request they began to send out rolling periodic notification to registered sex offenders identified in the request (CP 3092:#3.7); providing requesters with a copy of the request which included Zink's e-mail address, mailing address, phone number. PC outlined all

the causes of action that had been initiated based on their decision and actions in the notification of third parties (CP 3092-3093).

In outlining the decisions of the trial courts in causes #14-2-15100-0 PC did not include the information that the trial court in that case had declined to issue a temporary injunction to enjoin the SSOSA evaluation of adults convicted of sex offenses designated as Level II and III for registration purposes (CP 2589 #4).

d. History in Pierce County Superior Court – Cause #15-2-06442-3

Pierce County Superior Court Cause #15-2-06442-3 was initiated by John Doe G, an unidentified purported Level III sex offender on March 2, 2015 (CP 3125-26; 3101-24). Doe G filed motions for TRO (CP 3184-86; 3180-83; 3164-79) which was granted by the trial court that same day (CP 3142-69: RP (March 2, 2015) 1-16) and a motion to proceed in pseudonym (CP 3127-41) which was also granted by the trial court that same day (CP 32-3: RP (March 2, 2015) 15:3-8). The trial court did not apply GR 15 or the Ishikawa Factors in determining whether Doe G had a need to seal the court records that outweighed the public's right to know he had filed litigation in our judicial system. The trial court simply agreed to the order (*Id.*).

On March 9, 2015, Zink filed pro se notice of appearance in cause #15-2-06642-3 (CP 34-36). On March 11, 2015, Zink filed a response to Doe G's motion for preliminary injunction (CP 37-50) and motioned the court for permission to attend the hearing telephonically (3187-3193). PC filed response to Doe G's motion for preliminary injunction (CP 3194-3204). On March 12, 2015,

Zink filed a waiver of personal appearance and oral argument (CP 51-57) and PC filed a motion to consolidate (CP 1038-42; 1043-73).

On March 13, 2015, oral argument was heard before the Honorable Susan K Serko (RP (March 13, 2015) 1-27). Zink attended the hearing telephonically (RP (March 13, 2015) 4:13-15). PC, represented by Ms. Luna-Green, argued that since it was the fourth case to come before the court on the same issue, that the court should simply keep the status quo (RP (March 13, 2015) 5:5-7:2). Zink argued RCW 42.56.540 does not encompass allowing trial courts to repeatedly enjoin public records through use of a TRO, Preliminary Injunction and then a Permanent Injunction, the SSOSA evaluations have already been determined by our Supreme Court in Koenig to be non-exempt sentencing documents and Plaintiff hasn't shown any actual harm has been shown should the requested records be released (RP (March 13, 2015) 16:7- 19:1). Zink requested the trial court apply the analysis in RCW 42.56.540 in determining whether the record are exempt and can be enjoined and informed the court that she was not a quasi-party, she is an actual necessary defendant (*Id.* 19:2-16). Zink also gave argument concerning the sealing of the court records without application of GR 15 and Ishikawa (*Id.* 19:17-20:9). The trial court disregarded Zink's objection and requested to know why she was granting a preliminary injunction based on the merits of the case (*Id.* 21:20-21:16). PC clarified to the court that the only difference between a TRO and a preliminary injunction is that a preliminary injunction does not expire (*Id.* 21:17-22:9). The trial court requested to know if the order before her mirrored that signed by Judge Nevin (*Id.* 21:23-23:2). The

trial court was assured by PC that the orders were solid orders (*Id.* 23:3-5). Doe G was granted preliminary injunction (CP 3205-11).

On March 19, 2015, Doe G responded to PC's motion to consolidate (CP 168-79). On March 20, 2015, Zink filed a notice of pro se appearance (CP 180-82) and an answer to Doe G's complaint and request for injunction and declaratory relief (CP 3212-26). Zink filed for discretionary review of the trial court's order on preliminary injunction under RCW 42.56.540 and 7.40 as well as the trial courts order on sealing of the court records (CP 58-75).

On March 23, 2015, Zink filed and answer to the petition for declaratory and injunctive relief as well as a cross claim against PC (CP 1074-89). On March 25, 2015, Zink motioned the court to participate telephonically (CP 183-94). Zink's motion was opposed by Does L-O on March 26, 2015 (CP 192-95).

On March 27, 2015, PC's motion to consolidate Cause #14-2-14293-1, 14-2-15100-1, 15-2-05605-6 and #15-2-06442-3 was heard by the Honorable Philip Sorenson (RP (March 27, 2015) 1-18). At the hearing the trial court explained that he had just recently he had been with the Pierce County Prosecutor's Office and asked for input on whether there was a basis for him to recuse himself (*Id.* 3:21-4:8) explaining that he had worked with both Mr. Sommerfeld and Ms. Luna-Green (*Id.* 4:19-5:19). Ink stated that if the court felt it could be unbiased then she had no objection (*Id.* 5:20-6:7). The trial court granted the motion to consolidate all cases (*Id.* 8:18-19: CP 1092-94; 3227-29). On April 15, 2015, Zink filed a response in opposition to motion for preliminary injunction (CP 1125-33). Zink requested to know if her motion to appear telephonically was to be determined

that day (*Id.* 9:1-11:12) and was told that her motion was not timely (*Id.* 11:10-12). Prior to ending the proceedings, Mr. Michelman, John Doe G's attorney, requested the court to order Zink to provide her physical address despite the fact that he'd already served her (*Id.* 11:14-21). Zink objected to stating her physical address in open court since she had been receiving threatening communication from the third parties notified of her request (*Id.* 12:3-13). Zink stated that all parties already knew her physical address since she was served at her physical address and her mailing address was at the bottom of each pleading as required (*Id.* 11:22-12:19). The trial court insisted that Zink state her physical address to the court (*Id.* 12:20-23). Zink refused stating Michelman already had her physical address and her service address was all that was needed (*Id.* 12:24-13:6). Michelman insisted that Zink state her address because she was demanding to know the addresses of convicted sex offenders and forcing everyone to send documents via US postal service rather than through other means; such as in person (*Id.* 13:9-14:3). The trial court told Zink that under LCR 11(a), her physical address must be on every pleading and Zink provided her physical address to the court (*Id.* 14:14-15:6).

e. <u>History in Pierce County Superior Court – Consolidated Cases</u>

On April 8, 2015, PC motioned the court for preliminary injunction (CP 1095-1102). On April 10, 2015, Doe L-O filed a position statement concerning PC's motion for preliminary injunction (CP 1103-06). On April 13, 2015, Doe G filed a position statement concerning PC's motion for preliminary injunction (CP 1107-10). On April 14, 2015, Doe L-O filed a position statement on PC's motion for

preliminary injunction (CP 1111). Each of these parties agreed that PC motion for preliminary injunction to enjoin all juvenile records requested by Zink (CP 1095-1102).

On April 14, 2015, Zink filed a response in opposition to PC's motion for summary judgment outlining the requirements of 13.50 and the strict mandatory requirements of the PRA; including but not limited to RCW 42.56.540 (CP 1112-24; 1125-33). April 16, 2015, PC replied in support of their motion for preliminary injunction (CP 1134-38) and filed the declaration of Janet Ford (CP 1130-52).

On April 17, 2015, the trial court issued an order granting PC's motion to enjoin all juvenile sex offender records requested by Zink (CP 1153-59). PC never sent an exemption log or in any way identified exactly what records were being withheld, how many records, the kinds of records, the number of pages or an applicable exemption with a brief explanation of how that exemption applies.

May 14, 2015, PC filed answer to Zink's counter claim (CP 1160-67).

On June 18, 2015, a motion for an order to deny release of public records was filed (CP 1168) along with a declaration in support (CP 1169-70).

On June 23, 2015, this court denied discretionary review of the preliminary injunction and sealing of court records in Doe G's cause of action (CP 196-206).

f. History of John Doe C's Intervention into Cause #14-2-14293-1

On June 25, 2015, John Doe C filed a motion to intervene in Cause #14-2-14293-1 (212-15; 1171-73; 1174-87) and a motion to be allowed to proceed in pseudonym (CP 207-11; 1188-91). Zink filed a waiver of personal appearance and

oral argument (CP 216-20). On June 26, 2015, Doe C was also allowed by the trial court to intervene (CP 1192-94) and file court documents under a false identity without application of GR 15 or the Ishikawa Factors (CP 224-27).

g. History of Pierce County Superior Court Decisions and Orders

On June 26, 2015, the trial court entered an order for the scheduling of briefs in the consolidated cases (CP 1195-96). On July 7, 2015, Doe G filed motion for summary judgment permanent injunction and declaratory relief (CP 1199-1200; 1201-16; 1217-79). On August 19, 2015, John doe L-O motioned the court for summary judgment and permanent injunction (CP 1280-1300).

On August 20, 2015, Zink filed opposition to John Doe (CP 1746-91; 1792-1945) and motioned the court for summary judgment dismissal of all injunctions but not her crossclaims (CP 1946-66; 1967-69; 1970-2027). PC filed reply (CP 1696-1746; 1603-95), motioned the court for summary judgment and permanent injunction (CP 1577-84) and for summary judgment dismissal under CR 56 of Zink's counter claims (CP 1585-1602). Doe L-O responded to Zink's motion for summary judgment (CP 2073-88) and motioned the court for summary judgment and permanent injunction (CP 1301-1465) as well as Doe D (CP 1469-1502; 1503-57), Doe G (CP 1575-76) and Doe C (CP 1558-74) .

On September 4, 2015, Zink filed an affidavit in opposition to PC's motion for summary judgment dismissal with prejudice (CP 2103-08).

On September 11, 2015, Responses were submitted by John Doe D (CP 2034-43; 2176-85) and PC (CP 2028-33). On September 14, 2015, Zink filed responses

(CP 2063-72: 2044-62: 2130-38: 2109-29). PC filed a response to all motions from Does for summary judgment (CP 2089-2102).

On September 21, 2015, more declarations were filed as well as replies from PC (CP 2203-14: 2216-2250: CP 2186-90: 2191-2202), Doe D (CP 2164-75: 2268-80), Doe G (CP 2139-54), Doe L-O (CP 2155-63: 2251-67) and Zink (CP 228-31).

On September 25, 2015, the Honorable Philip Sorenson heard all motions (RP (September 25, 2015) 1-38). The trial court denied Zink motion for summary judgment dismissal (*Id.* 5:1-7:2). Does L-O argued that RCW 4.24.550 and the Supreme Court's decision in Ward, showed that the requested compliant Level I offender records are exempt (*Id.* 8:1-13:15). Doe G made a similar argument concerning RCW 4.24.550 (*Id.* 13:17-14:4). Based on this argued, the trial court determined RCW 4.24.550 is an "other statute" exemption (*Id.* 14:10-21) and that Zink did not meet the qualifications for access to Level I and II sex offender records from Pierce County (*Id.* 1524-16:5).

The court next looked at the SSOSA and SSODA records. The parties argued to the court that they are healthcare records (*Id.* 17:6-25:18) as well as an argument to the court that it is possible that there would be SSOSA evaluations held in the prosecutor's office that are not a part of the court record based on the fact that often times SSOSA evaluations are used to reduce a charge, plea negotiations rather than the result from a person requesting SSOSA (Id. 23:16-24:25). Based on the arguments, the trial court found that the SSOSA evaluations are healthcare records (*Id.* 25:11-18). Orders were entered on

Next the trial court heard argument on PC motions for permanent injunction of all requested juvenile records as well as the motion to dismiss Zink's counter claims. (*Id.* 27:12-28:8). Based on the pleadings and argument the trial court granted PC's motion for summary on Zink's counterclaims and permanent injunction of the requested juvenile records (*Id.* 28:8-15). PC then argued the factual issues of the case and explained to the court what findings they needed to be made in the order (*Id.* 28:16-36:13). An order denying Zink's motion for summary judgment dismissal of the injunctions was entered in the court (CP 2283-85).

On October 9, 2015, the final hearing was held before the Honorable Philip Sorenson (RP (October 9, 2015) 1-28). At the hearing Zink participated telephonically (Id. 4:17-24). Prior to the trial court signing the findings, conclusions and orders in the Doe G and Doe C cases, permanently enjoining the records, Zink requested that the order be pared down since they were overly long and there were so many going up on appeal and argued that the wording of the injunction is vague and ambiguous (*Id* 17:8-18:25). The trial court signed orders granting Doe L-O's permanent injunction (CP 2313-22), PC's motions for permanent injunction and denying Zink's motion for summary judgment (CP 2335-39), PC motion for summary judgment dismissal of Zink's counterclaims (CP 2340-54). Doe G's motion for permanent injunction (CP 2299-2312) and Doe C's motion permanent injunction to (CP 2323-32).

On October 19, 2015, Zink motioned the court for reconsideration (CP 2355-61; 2362-65; 2366-2549). On November 3, 2015, the trial court granted permanent injunction to Doe D enjoining the records he was named in and on

behalf of the class of Level II and III sex offenders (CP 2550-64). On November 20, 2015, the trial court denied Zink's request for reconsideration (CP 2565).

On November 3, 2015, the certificate of finality was filed from Court of Appeals Division II (CP 76-88) clearly identifying the legal reasons Division II would not hear the issue of preliminary injunction and sealing of court records.

On December 16, 2015, Zink filed Notice of Appeal to Division II (CP 2566-2713). PC filed cross appeal on December 29, 2015 (CP 2714-69).

h. History on Review

After this appeal was filed on December 16, 2015, a motion to stay was submitted on March 7, 2016, while our Supreme Court made determination concerning RCW 4.24.550 and whether it was an "other statute" exemption controlling the release of sex offender records by our penal system. This stay was granted that same day. On April 7, 2016, our Supreme Court made final determination in *Doe v. WSP, 185 Wn.2d 363 (2016)*. RCW 4.24.550 was determined to not be an exemption under the PRA by our Supreme Court and reversed the trial courts decisions and orders enjoining any and all records and information concerning sex offenders; including both the adult and juvenile registration forms of sex offenders, the database or list of all sex offenders and other documents containing registration information such as e-mails.

The stay was lifted in this Cause of action on May 12, 2016 and Zink requested on extension on time to file on June 24, 2016 which was granted. Due to the heavy workload created when all cases stayed pending the decision in Doe v. WSP, Zink requested a second extension which was granted to August 26,

2016. Zink was still unable to complete the briefing on this action due to the sheer number of plaintiffs and different and varying arguments in these consolidated cases, Zink requested another extension of five additional days to complete briefing in this cause of action. This motion has not yet been determined.

IV. ARGUMENT

1. Dismissal of Zink's Counterclaims Under CR 56 Summary Judgement

On October 9, 2015, the trial court entered summary judgment dismissing Zink's claims against PC for violations of the PRA (CP 2670-84). Summary judgement dismissal is not appropriate and the trial court abused its discretion in dismissing Zink's claims with prejudice (CP 2684).

The standard of review of an order of summary judgment is de novo, and the appellate court performs the same inquiry as the trial court.

> When reviewing an order granting summary judgment, an appellate court reviews the matter de novo by engaging in the same inquiry as the trial court. E.g., Marquis v. City of Spokane, 130 Wn.2d 97, 104-05, 922 P.2d 43 (1996). Under this standard, the appellate court determines whether genuine issues of material fact exist and whether the moving party is entitled to judgment as a matter of law. Facts are reviewed in the light most favorable to the nonmoving party. E.g., Marquis, 130 Wn.2d at 105 (citing CR 56(c)). Based on this deferential standard of review, we focus on Alliant's assertions and admissions of fact.

Drinkwitz v. Alliant Techsystems, Inc., 140 Wn.2d 291, 292, 996 P.2d 582 (2000). See also *Washburn v. City of Federal Way*, 178 Wn.2d 732, ¶44, 310 P.3d 1275 (2013).

> Summary judgment is proper when the pleadings, affidavits, depositions, and admissions on file demonstrate there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998)). The burden is on the moving party (PC) to demonstrate there is no genuine dispute as to any material fact. Additionally, the court is required to consider all facts and reasonable inferences in favor of the nonmoving party (Zink). *Babcock v. Mason County Fire Dist.* No. 6, 144 Wn.2d 774, 784, 30 P.3d 1261 (2001). Challenges to agency actions in responding to requests for public records brought under RCW 42.56.550 are reviewed de novo. *Rental Hous. Ass'n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 536, 199 P.3d 393 (2009). *Hobbs v. State*, 183 Wn. App. 925, ¶ 20, 335 P.3d 1004 (2014). Both will be discussed in relation to the evidence submitted to the court and the decision in *Hobbs*.

> When interpreting a statute, we must determine and enforce the legislature's intent. Rental Hous. Ass'n, 165 Wn.2d at 536. Where the meaning of statutory language is plain on its face, we give effect to that plain meaning as an expression of legislative intent. Rental Hous. Ass'n, 165 Wn.2d at 536. When interpreting provisions of the PRA, we consider the PRA in its entirety to effectuate the PRA's overall purpose. Rental Hous. Ass'n, 165 Wn.2d at 536.

Hobbs v. State, 183 Wn. App. 925, ¶20, 335 P.3d 1004 (2014) (emphasis added). The PRA is a multifaceted and emphatic mandate to agencies and our courts that the publics records are to be released upon request unless an exemption applies preventing the release RCW 42.56.050. The evidence in this

cause of action clearly show that PC took action in responding to Zink's requests by: 1) not responding (PCPAO – Zink's October 3, 2014 request); 2) not providing records (PCSD - request for list of persons notified); 3) unreasonably delayed and denied nonexempt records (PCSD notification and instigation of litigation to prevent release); 4) not proving exemption logs for the records being withheld in their entirety or redaction of entire entries on the list or database; 5) initiating frivolous legal action (PC knew the records were not exempt and, with the exception of the juvenile records, argued at all time that the records were not exempt); and 6) initiating legal action in the courts to enjoin the release of the juvenile records now found to be nonexempt by our Supreme Court. All of these actions by PC are genuine issues of material facts clearly showing that a controversy exists for which Zink is entitled to have reviewed under RCW 42.56.550 and PC is not entitle to summary judgment dismissal with prejudice.

2. Mandatory Requirements of the Public Records Act

The Washington Public Records Act is a powerful tool of the people to maintain control of all branches and agencies of government[11] through access to public records.[12] In order for the people to maintain control over government

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11 RCW 42.56.010(1); RCW 42.56.070; *King County v. Sheehan*, 114 Wn. App. 325 57 P.3d 301(Div. I, 2002); *Rental Hous. Ass'n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 527, 199 P.3d 393 (2009).

12 RCW 42.56.010(3)(4); O'Neill v. City of Shoreline, 170 Wn.2d 138, ¶14-15, 240 P.3d 1149 (2010).

conduct, production of public records must be liberally construed and exemptions to production must be narrowly construed.[13] Our broad PRA exists to ensure that the public maintains control over their government, and the Courts will not deny the citizenry access to a whole class of possibly important government information.[14]

Public agencies are required to release all records created, owned, used, and/or retained by their respective agencies as expeditiously as possible.[15] Public agencies are not to distinguish amongst requesters.[16] Public agencies cannot exempt records from production based on the identity of the requester.[17] Public agencies in responding to a request for records cannot inquire as to the motivation of the requester.[18]

All public records created, owned, used and/or retained by public agencies are public and must be disclosed.[19] All non-exempt public records must be produced.[20] All exemptions claimed by public agencies resulting in non-production of public records, in whole or in part, must be justified, in writing, identifying the document withheld, the exemption allowing the withholding of

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13 RCW 42.56.030; *Livingston v. Cedeno*, 164 Wn.2d 46, ¶6, 186 P.3d 1055 (2008).

14 *O'Neill v. City of Shoreline*, 170 Wn.2d 138, ¶15, 240 P.3d 1149 (2010).

15 RCW 42.56.100.

16 Zink v. City of Mesa, 140 Wn. App. 328, ¶24, 166 P.3d 738 (Div. III, 2007).

17 RCW 42.56.050

18 RCW 42.56.080. *City of Lakewood v. Koenig*, 160 Wn. App. 883, ¶16, 250 P.3d 113 (Div. II, 2011)

19 *Sanders v. State*, 169 Wn.2d 827, ¶3, 240 P.3d 120 (2010).

20 *Sanders v. State*, 169 Wn.2d 827, ¶4, 240 P.3d 120 (2010).

the record, and an explanation of how that exemption applies to the withheld document or portion of the document.[21]

A claimed exemption is invalid if it does not in fact cover the requested document.[22] Agencies are under no obligation to claim exemption.[23] Conflict between the Washington State Public Records Act and any other statute, rule or law shall be decided under the statutory requirements of the Public Records Act.[24] Courts are to take into account that examination of public records is in the public interest, even though such examination my cause embarrassment to others.[25] Agencies are not to make privacy interest determinations on the basis that it identifies a person or a particular class of persons.

3. Notification of Third Parties, Privacy Rights and Injunction of the "Public's" Records

Agency action taken or challenged under the PRA is reviewed de novo. RCW 42.56.550(3); PAWS II, 125 Wn.2d 243, 252, 884 P.2d 592 (1994). The Court of Appeals stands in the same position as the trial court as if the trial court had never happened. Three statutes contained within the PRA deal with enjoining the "public's records and third parties: RCW 42.56.210(2), RCW 42.56.520 and

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[21] RCW 42.56.210(3); RCW 42.56.520.

[22] *Sanders v. State*, 169 Wn.2d 827, ¶5, 240 P.3d 120 (2010).

[23] *Seattle Times v. Serko*, 170 Wn.2d 581, ¶29, 243 P.3d 919 (2010).

[24] RCW 42.56.030.

[25] RCW 42.56.550(3). *Koenig v. Thurston County*, 175 Wn.2d 837, ¶9, 287 P.3d 523 (2012); *King County v. Sheehan*, 114 Wn. App. 325, 336, 57 P.3d 307 (Div I, 2002).

RCW 42.56.540. Legislative intent becomes clear when these statutes are read together as they complement each other.

RCW 42.56.520 clearly states "[a]dditional time required to respond to a request may be based upon the **need to notify third parties**" (emphasis added). RCW 42.56.540 states that "an agency **has the option** of notifying persons named in the record or to whom a record specifically pertains" (emphasis added) unless required by law. Finally, RCW 42.56.210(2) clearly states inspection or copying of any specific exempt record(s) may be permitted if the superior court in the county in which the record is maintained finds, **after a hearing with notice thereof to every person in interest and the agency**, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function." If the Court does not read together these subsections in this manner, then the **need** to notify in section .520 would be rendered superfluous by the agencies "**option**" to notify under section .540. Furthermore, the language of .210(2), giving a trial court the right to **allow access to exempt records** would be meaningless; a result we avoid when interpreting a statute. PAWS II at 260.

> We will not interpret statutes in a manner that renders portions of the statute superfluous.

Lutheran Day Care v. Snohomish County, 119 Wn.2d 91, 829 P.2d 746 (1992), cert denied, 506 U.S. 1079 (1993)).

PC did not identify an exemption or establish a need to notify anyone of Zink's request. Instead PC claims that their code (PCC 2.40.040(4)(D) and RCW 42.56.540 provided them the legal means to notify third parties without claim of exemption. This is an erroneous and dangerous reading of RCW 42.56.540. Under PC's interpretation an agency can withhold any record indefinitely without providing an exemption log or being held responsible for an unreasonable delay or denial simply by notifying third parties and pitting the requester against a person named in the record using expensive litigation. If the requester cannot afford the litigation expenses, then the records are permanently enjoined. This is error. RCW 42.56.540 is not a standalone statute providing agencies with a way to prevent release of nonexempt public records; a get out of jail free card for erroneously withholding records through notification of third parties. Further, as in this case, notification of third parties violates RCW 42.56.240(8) since PC is the holder and provider of the sex offender information; the information requested by Zink.

The PRA mandates that all public records be promptly released and responses to denial of records is accompanied by an exemption log identifying the records being withheld. The provision of the PRA must be strictly applied to all agency actions. RCW 42.56.540 "merely creates an injunctive remedy, and is not a separate substantive exemption." PAWS, 125 Wn.2d at 257. Too warrant an injunction preventing disclosure, a public record must fall within a specific

exemption under the Public Records Act. *Id. Soter v. Cowles Publ'g Co.*, 162 Wn.2d 716, *fn* 18, 174 P.3d 60 (2007).

Further, RCW 42.56.050 is the statute relating to "privacy" in public records; the main issue in these consolidated cases.

> A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records.

(*Id.*). In 1987, in response to our Supreme Court's decision in *Rosier* in 1986, our legislature amended RCW 42.56.050 reversing our Supreme Court's decision:

> The legislature intends to restore the law relating to the release of public records largely to that which existed prior to the Washington Supreme Court decision in "In Re Rosier," 105 Wn.2d 606 (1986). The intent of this legislation is to make clear that: (1) Absent statutory provisions to the contrary, agencies possessing records should in responding to requests for disclosure not make any distinctions in releasing or not releasing records based upon the identity of the person or agency which requested the records, and (2) **agencies having public records should rely only upon statutory exemptions or prohibitions for refusal to provide public records.** Further, to avoid unnecessary confusion, "privacy" as used in RCW 42.17.255 is intended to have the same meaning as the definition given that word by the Supreme Court in "Hearst v. Hoppe," 90 Wn.2d 123, 135 (1978)." [1987 c 403 § 1.]

RCW 42.56.050 Legislative Intent. The intent of our Legislature has been made crystal clear. When determining whether to withhold public records due to privacy issues, agencies must first identify an exemption RCW 42.56.050. If no exemption exists, the agency has no need (RCW 42.56.520) to notify third parties (RCW 42.56.540). PC not only didn't identify an exemption, PC did not provide an exemption log and, after instigating legal action from third parties, argued in the ensuing litigation that the records were not exempt. PC was proven to be correct. The requested records are not exempt. Based on the actions of PC the records were unreasonably withheld for years though use of frivolous litigation initiated by PC and cost the requester economic loss simply because a request was made.

4. Application and Statutory Sufficiency of Pierce County Code (PCC) 2.40.040

Despite the strongly worded mandates of our legislature, PC claims that PCC 2.40.040(4)(D) allows them to notify third parties if "the requested records contain information that may affect rights of others and may be exempt from disclosure." Although agencies are required to enact rules concerning the PRA, those rules must not be in violation of state statutes. The PCC violates the PRA by stating that PC can contact third parties under RCW 42.56.540 if a privacy issue is identified and an exemption **may** apply. As previously discussed, RCW 42.56.050, the statute dealing with "privacy" under the PRA, clearly states that "privacy" alone is not adequate. The privacy issue must be accompanied by an

identified exemption (agencies must rely upon an exemption in refusing to produce records). PCC2.40.040(4)(D) allows an agency to deny public record based on a possible exemption and is in violation of RCW 42.56.050.

Under the PRA, the "public's" records are to be made promptly available upon request and all denials must be accompanied by an exemption log clearly outlining what records were being withheld, the number of records withheld, the author, as well as the claimed exemption and a brief explanation of how the claimed exemption applies to the requested record. Our legislature states three time that this is to be the case in all denials of public records. RCW 42.56.050, 42.56.070(1), and 42.56.210(3).

Despite the strongly worded mandate, PC did not provide Zink with any exemption logs for the records being withheld in their entirety. This is not an optional requirement. It is a mandatory requirement. On October 30, 2014, PC sent out hundreds of third party notification letters and did not provide Zink with an exemption log of the records being withheld in their entirety (CP 298-299; 1634-35; 1982-83). Five days later PC notified Zink of their action in notifying third parties to seek injunction of the records (1621-22; 1985-86). Not exemption log was provided. On November 24, 2014, PC sent a redacted database delaying the release of hundreds of sex offenders without providing an exemption log (CP 1627). Clearly PC violated the mandatory requirement for an exemption log and unreasonably delayed or denied the release of hundreds of records requested by Zink.

PC claims that Zink was involved in the litigation and that somehow allowed them to disregard the strict mandates of the PRA. No legal authority has been provided and PC's action in notification of third parties and instigation of legal action is a violation of the PRA subjecting them to penalties. RCW 42.56.540 was not enacted by our legislature to provide a shield to an agency should they choose not to disclosure nonexempt records or as a weapon to be used against requesters who ask for nonexempt records the agency does not want to disclose. Further, PC took final action when they filed an action in the court to enjoin any and all requested juvenile records. No third party is involved in that action. None the less, PC did not provide an exemption log to Zink identifying all records withheld, the applicable exemption and how the exemption applies. PC summoned Zink into court without even an opportunity to determine whether any of the claimed exemptions applied to the requested juvenile sex offender records. Instead, PC simply summoned Zink into costly litigation under RCW 42.56.540 to obtain a judicial exemption. PC's actions in responding to Zink's request for access to nonexempt records are atrocious and PC must be held accountable under the strict mandates of the PRA.

V. SUMMARY JUDGMENT DISMISSAL WAS ERROR AND AN ABUSE OF THE TRIAL COURT'S DISCRETION UNDER THE STRONGLY WORDED PRA

The plain language of the PRA mandates that requesters have right to receive a reasonable response within a reasonable time period from all public agencies (RCW 42.56.550). PCSD determined they had the option to notify third

parties pursuant to RCW 42.56.540 and PCC 2.04.040(4)(D) and took action (CP 1634-35); notifying those affected by Zink's requests via "rolling notifications" lasting approximately 27 weeks (1621). PCSD's action in notifying third parties rather than releasing the records was final action unreasonably denying the release of records under the PRA. Zink has right to request judicial review of PC's actions in responding to her requests under RCW 42.56.550 and the trial court had no authority to dismiss her claims under summary judgment dismissal with prejudice as a genuine issue of law exists.

> In Sanders, we rejected the State's argument that the only remedy for the State's insufficient withholding index was to compel an explanation of the exemptions. 169 Wn.2d at 847. We found that interpretation of RCW 42.56.550(4) would contravene the PRA's purpose because an agency would have "no incentive to explain its exemptions at the outset" and "[t]his forces requestors to resort to litigation, while allowing the agency to escape sanction of any kind." Id. (citing Spokane Research & Def. Fund v. City of Spokane, 155 Wn.2d 89, 103-04, 117 P.3d 1117 (2005)).

City of Lakewood v. Koenig, 182 Wn.2d 87, ¶18, 343 P.3d 335 (2014). The same is true here. PC knew the requested records were not exempt but did not want to release them So they wrongfully notified third parties in violation of RCW 4256.050 and 42.56520. PC claims they are allowed to notify third parties without just cause claiming the PCC 2.40.040(4)(D) allows notification if there may be a privacy issue and "may" be an exemption. While agencies are required to enact rules under the PRA, allowing for the timeliest possible action on responses and the providing of access to records to the public (RCW 42.56.100),

those rules may not violate the strict requirements of the PRA (RCW 42.56.030).

The PRA emphatically states that in terms of use for "privacy" in responding to requests: "agencies having public records should rely only upon statutory exemptions or prohibitions for refusal to provide public records" RCW 42.56.050. Interestingly, RCW 4.24.550 is also clear and unambiguous, "[p]ersons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government." Even if PCSD followed PCC 2.40.040 in determining to notify third parties, they were precluded by RCW 42.56.050 and 4.24.550 from considering sex offender information as "private" or "personal."

PC clearly violated the PRA as discussed in this brief, did not meet their burden of proof that their actions were not actions or final actions or that they did not repeatedly deny the release of public records when they started making rolling notification on October 30, 2014 to initiate legal action, ignored her requests, refused to communicate in any form other than US postal service and over charged for records without justifying their charges as mandated by the PRA and as requested by Zink; denying the release of public records in an electronic format that could easily be produced in that format.

Further PC clearly withheld all juvenile records which have been found to be not exempt when they initiated action in the court to enjoin the records. That is

not only an action it was their final action in responding to the requests for access to juvenile sex offender records.

Furthermore, the Court in Hobbs was discussing final action under RCW 42.56.520. Zink filed her complaint pursuant to RCW 42.56.550 which only requires some action or inaction rather than a "final action.".

> The language in **RCW 42.56.520** itself refers to "final agency action or final action." Thus, based on the plain language of the PRA, we hold that before a requester initiates a PRA lawsuit against an agency, **there must be some agency action, or inaction**, indicating that the agency will not be providing responsive records.

Hobbs v. Wash. State Auditor's Office, 183 Wn. App. 925, 335 P.3d 1004 (2014) (emphasis added).

> Agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at **the end of the second business day following the denial of inspection** and **shall constitute final agency action** or final action by the office of the secretary of the senate or the office of the chief clerk of the house of representatives for the purposes of judicial review.

RCW 42.56.520(emphasis added). Two days after PC notified third parties PC's actions were considered final actions.

> (1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency...

(2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request...

RCW 42.56.550(1)(2). PC took action on October 30, 2014 when they sent out notification letter and delayed release of the records as well as other action as specified in this brief and Zink's complaint. Zink motioned the court under RCW 42.56.550 to review PC's actions in responding to her requests for access to sex offender records of conviction. Summary judgment dismissal under the decision in Hobbs is error and must be reversed and remanded for further hearing by the trial court.

5. The Evidence Provided by Pierce County Does Not Show They Did Not Violate the PRA in Responding to Zink's Requests and Does Not Support the Findings, Conclusions or Order of the Trial Court

In this cause of action, PC motion the trial court to dismiss Zink's claims for unreasonable delay and denial, filed pursuant to RCW 42.56.550, under a summary judgment motion claiming that, like in Hobbs, Zink filed suit prior to finalization of her request (CP 1596).

PC argued that in order for a requester to file a suit pursuant to RCW 42.56.550, the agency must have taken final action on the request. PC argued that since they were producing records of Level I non-complaint sex offenders, despite the fact that all adult complaint Level I, Level II and Level III as well as all juvenile sex offender records were denied by PC no final action occurred and

Zink's claims are not ripe for review and dismissal with prejudice is the remedy citing to *Hobbs*, 183 Wn. App 946. (CP 1596-1598).

Based on PC's arguments, and evidence submitted through declarations, the trial court found: 1) Zink's request was submitted to the PCSD on October 6, 2014 to PCSD only (CP 2671- FOF I.1) the November 25, 2014 request was a "follow-up" request for sentencing and judgment documents of all registered sex offenders (*Id.* FOF I.2); and 3) Zink informally requested a list of all third parties notified of her request as part of that same communication (*Id.*).

The evidence provided clearly shows Zink submitted her first request was sent on October 3, 2014, the request specifically identified that Zink wanted records from both the PCSD and PCPAO and that Zink requested contact and transfer of records electronically (CP 1143-44). The evidence shows that the PCSD assigned this request file #1410029 (CP 1619) and told Zink to expect an answer in six to eight weeks (*Id.*).

The evidence clearly shows Zink submitted a second different request on October 31, 2014, for the list of persons notified of her request (CP 1632 para. 2) and that on November 6, 2014, PCSD responded, assigning the request to file #1411005 and stating that the list of offenders notified would be provided on November 24, 2014 (*Id.*). The evidence shows Zink contacted PCSD on November 25, 2014, when she did not receive the list and made a second request for the list of notified offenders (CP 1615 para. 8). PCSD did not respond. The evidence clearly shows that on November 21, 2014, after the previously

requested records had been denied by PC through third party notification and legal action, Zink submitted a third and separate request for sentencing, judgment and plea documents required to be maintained as public records and was assigned file #1412028 (CP 1147) by PCSD and #137/14-1337 by PCPAO (CP 1709). Each of these requests were standalone requests rather than one continuing request as found by the trial court.

The trial court found that PCSD had appropriately given third party notice pursuant to RCW 42.56.540 and PCC 2.04.040 based on other jurisdictions decisions concerning sex offender records and were acting in good faith (CP 2671-72: FOF II.1 and II.2). The evidence shows that other jurisdictions released the SSOSA evaluation and did not notify third parties of Zink's requests (CP 1945).

The trial court found that the inclusion of Zinks request was consistent with the requirements of PCC 2.40.040 (CP 2673 FOF II.3). As previously discussed PCC is not statutorily sufficient and PC has not shown that a privacy issue existed or an exemption applied. Further RCW 42.56.240(8) mandated that Zink's identity not be provided to sex offenders and that PC's continuing "rolling notifications" subjected Zink to harassment (CP 1149; 1995) that lasted well into June 2015 (CP 1937; 1939) and beyond.

The evidence clearly shows that on October 30, 2014 (CP 1982-83), PCSD took final action concerning Zink's October 31, 2014 request and decided to delay release of the records in order to notify third parties based on PCC

2.40.040 and RCW 42.56.540 (CP 1608:1-7; 1630). Once PC notified third parties and initiated these causes of action, the records could not be released. The records have been withheld for approximately 2 years without any reasonable explanation or exemption log. PC argues that somehow RCW 42.56.540 gives them immunity under the PRA. This could not be further from the truth.

The trial court found that PC did not have to provide records in the format requested (CP 26787-81: FOF VI.1 – X.4). The evidence clearly shows that the PC was capable of communicating via e-mail and transmitting the requested records via electronic transfer or CD at a much reduced rate than claimed by PCPAO (CP 1604:14-1607:14; 1645). The trial court found that copy costs were reasonable pursuant to RCW 42.56.120 (CP 2678 FOF VIII.1). While RCW 42.56.120 states that a "reasonable charge may be imposed for providing copies of public records" which "shall not exceed the amount necessary to reimburse the agency," RCW 42.56.070(7) requires agencies to "establish, maintain, and make available for public inspection and copying **a statement of the actual per page cost or other costs**, if any, that it charges for providing photocopies of public records **and a statement of the factors and manner used to determine the actual per page cost or other costs**, if any (emphasis added). PC did not provide Zink with a statement of the factors used to determine the cost for providing the records on a CD or through electronic transfer. These are genuine issues of a material fact precluding the trial court from dismissing the claims of

overcharging by PC and failure to provide records in the requested format and response to e-mail requests through summary judgment.

The trial court found that PSPD sending correspondence to the wrong mailing address was due to Zink failing to make the original request in the format required by PC, which is to make the request via fax and/or US postal service and provide then with a correct return address, had she done so none of the address errors would have likely occurred (CP 2681: FOF XI.1). This finding is contrary to law.

> Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person including, ... Agencies shall not deny a request for identifiable public records solely on the basis that the request is overbroad. Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request .. Agencies shall honor requests received by mail for identifiable public records unless exempted by provisions of this chapter.

RCW 42.56.080. Zink was not under any obligation to file her requests under fax or by US mail. Furthermore, Zink did make her first request via fax (CP 1611-12; 1614). Further there is no legal requirement for Zink to only request record in a certain format and e-mail is considered mail, more reliable, leaves a trial clearly showing whether the records were received or not. Furthermore, the trial court's finding that US mail will be returned if not delivered allowing an agency to remedy any error (CP 2681 FOF X.3). PC did not provide any evidence that they attempted to contact Zink when the letters address to the

wrong mailing address was returned to them (CP 1711; 1714; 1728; 1740). Rather, the evidence shows they simply kept sending them to the wrong address not even attempting to contact Zink by fax or e-mail to determine the cause.

Clearly the evidence provided by PC is not accurately interpreted by the trial court and the court erred in entering it's findings. As the conclusions are based on erroneous findings, to decrease duplication of arguments Zink relies on the arguments presented in this briefing concerning the trial courts conclusions and orders as well as any findings not clearly identified in this section of this voluminous case consisting of 4-5 separate and individual causes of action (PC, Does L0O, Doe D, Doe G and Doe C).

Clearly there are genuine material fact which need to be discovered and determine and PC is not entitled to summary judgment dismissal of Zink's claims against them.

6. Effect of Decision of Our Supreme Court in *Doe v. WSP* on This Cause of Action

Many of the documents enjoined by the trial court in each of these consolidated cases are registration records or records containing registration information including but not limited to both adult and juvenile registration records, list or database of sex offenders registered in PC (CP 1980), list of persons notified of Zink's request (CP 1632; 1988; 1994) as well as sentencing, judgement and pleas agreement documents pursuant to RCW 9.94A.475 and 480 (CP 1705-07). In a recent decision by our Supreme Court, RCW 4.24.550 was determined to not be an "other statute" exemption and does not exempt the

release of either juvenile or adult registration records and information; *Doe v. WSP,* 185 Wn.2d 363 (2016).

Since the ultimate decision has been made by our Supreme Court in *Doe v. WSP* concerning registration record of both juveniles and adults, further argument on the issue of whether RCW 4.24.550 can be used by PC, Doe L-O, Doe D, Doe G or Doe C to prevent release and production of the enjoined records would be a waste of the court's time. [T]he decisions of the courts of last resort are held to be binding on all others. *State v. Ray*, 130 Wn.2d 673, 677, 926 P.2d 904 (1996). The records being withheld pursuant to RCW 4.24.550 by PC are both adult and juvenile:

- Registration records;
- List and/or database of sex offenders registered in PC;
- List of persons notified of Zink's request; and
- Sentencing, judgement and pleas agreement documents pursuant to RCW 9.94A.475 and 480).

Zink respectfully requests this Court to reverses any trial court orders entered in these consolidated cases pertaining to and enjoining these adult and/or juvenile records.

7. Use of Pseudonym and Court Records

Open administration of justice is a vital constitutional safeguard that may not be overridden to seal or redact court records except in the most unusual of circumstances. *Hundtofte v. Encarnación,* 181 Wn.2d 1, 330 P.3d 168 (2014). Here Respondents did not show a serious and imminent threat to a compelling interest that outweigh the public's interest in the open administration of justice.

Respondents argued that each person has the right to a false identity and as long as the court has no knowledge of the identity of the individual filing complaint, summons and declarations, the records are not sealed. This is not only contrary to well established court rules but it is also contrary to state statute Chapter 42.56 RCW (PRA) and a constitutional violation.

Zink, as a member of the general public and as an individual has right to know the party summoning her into court. Without that knowledge a trial court has no way to establish whether a party bringing action under RCW 42.56.540 has established they named in or the records specifically pertains to them. Simply saying that the person is named in the record is not good enough. The law requires that an affidavit be submitted as evidence. Furthermore, in a class action, the class representative must prove they actually are representative of the class they are assigned to represent. If the representative is totally unknown to the trial court, the court cannot assign that individual as class representative. Again, it is not enough for the party seeking to be a class representative to say they someone without verifiable evidence.

Although, as in Federal law, there are circumstances where a party is allowed to seal court records such that the parties name is unknown to the public, the party must still provide their name and apply court rules and established case law to determine whether the party has a right to secrecy in our judicial system. The entry of the Plaintiffs by the court clerk was error. The complaint and summons should have been rejected as deficient and Respondents should have been required to file motion and argue proper sealing of the court records in order to hide their identity. The trial court has not only committed

error of law, the trial courts' decision that the court did not need to know the identity of a litigant is a violation of our Washington State Constitution.

The questions before the Court is whether the records needed to be sealed, are the records sealed and, if so, were the records properly sealed under the correct standard; GR 15 and the Ishikawa Factors. If the trial court reached its decision to allow secrecy in our courts without use of GR 15 and Ishikawa, it used an improper legal standard and the proper action for this Court to take is to remand back to the trial court to apply the correct rule. *Bennett v. Bundy,* 176 Wn.2d 30, ¶9, 291 P.3d 886 (2013).

A trial court's decision to seal records is reviewed for abuse of discretion. *Dreiling v. Jain*, 151 Wn.2d 900, 907, 93 P.3d 861 (2004). However, the proper standard governing the sealing of court records is reviewed de novo. *Rufer v. Abbott Labs.*, 154 Wn.2d 530, 540, 114 P.3d 1182 (2005). The same principles used to determine the meaning of statutes also applies to the interpretation of court rules *State v. McEnroe*, 174 Wn.2d 795, 800, 279 P.3d 861 (2012). Court rules and State statutes must be interpreted and construed in such a fashion as to give all the language used effect, and no portion may be rendered meaningless or superfluous in the interpretation. *G-P Gypsum Corp. v. Dep't of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010)(see also *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003)).

The standard of review of the interpretation of court rules and state statutes is reviewed de novo. *Citizens All. for Prop. Rights Legal Fund v. San Juan County*, 184 Wn.2d 428, ¶11 359 P.3d 753 (2015). In this cause of action, the

trial court has interpreted the rules and statutes to allow parties (Doe C, D, G, L, M, N and O) to file in complete anonymity, to proceed in pseudonym, such that even the court does not know the true identity of the party initiating action in the court. This is error.

The rules associated with sealing of court records is found at GR 15. The definition of a court record is found at GR 31 and the requirements for identification of a true party of interest being named in the caption of the court records is found at CR 4, 10 and 17. Each of these court rules contain language that when read together require a party initiating legal action against another party to provide their legal name and be identified as the true party of interest. All parties to an action must be identified in the complaint and summons as well as the declarations, affidavits and other court records.

Plaintiffs in these consolidated actions were allowed to file all court documents under a false identity, without justification, so that even the court does not know the identity of Plaintiffs. This is not only an erroneous interpretation of court rules it is a constitutional violation Art. 1 § 10 and the trial courts orders allowing all Does to file in secrecy must be reversed and remanded back for proper application of GR 15 and Ishikawa.

Without application of GR 15 and the Ishikawa Factors, the trial court's orders concerning use of pseudonym are not based on any legal authority and violate our State Constitution prohibiting secrecy in our judicial system.

> [A] court considering whether to seal a court record also must determine whether the sealing would violate Washington Constitution article I, section 10. To make this determination, a

> court must analyze the five factors set forth in Ishikawa. See, e.g., Allied Daily Newspapers of Wash. v. Eikenberry, 121 Wn.2d 205, 209-11, 848 P.2d 1258 (1993) (striking down a statute under article I, section 10 because the statute was not consistent with the Ishikawa factors). Ishikawa "requires a showing that is more specific, concrete, certain, and definite than" the "compelling privacy or safety concerns" required by GR 15(c)(2). State v. Waldon, 148 Wn. App. 952, 962-63, 202 P.3d 325 (2009).

In re Dependency of M.H.P., 184 Wn.2d 741, ¶37, 364 P.3d 94 (2015) (emphasis added). Here the trial court did not have a hearing and did not apply any court rule or state statute to determine whether Does had right to hide their identity. The trial court simply entered vague statements mirroring the language in GR 15 or no findings at all.

The order entered in Doe L-O contains findings that do not provide any specific concrete, certain or definite compelling reasons for the need for secrecy (2572-73). The orders entered in Doe G and Doe C's causes included one sentence stating "the court finds that the Plaintiff's need for anonymity outweighs prejudice to the opposing party and the public's interest in knowing the Plaintiff's identity (CP 2606-07; 2639). Doe D was allowed to file all court documents throughout the entire litigation under the pseudonym Doe D without any action or order from the trial court (2800-12; 2816-28; 2588-90; 2592, 2697). These are error of law and an abuse of the trial court's authority and must be reversed and remanded for proper application of GR 15 and the Ishikawa Factors to determine whether any of the Does filing in these actions are entitled to secrecy in our judicial system and if not their true identity must be provided.

8. The True Party of Interest Must be Known by the Court and the Litigants in Order to Determine Whether They can Legally Enjoin Records Pursuant to RCW 42.56.540 and/or Are Actually Representative of a Class

The key to distinguishing information to which article I, section 10 applies is dependent on whether the records are used by the trial court in its decision-making process. *Bennet v. Bundy*, 176 Wn.2d 303, ¶15, 291 P.3d 886 (2013) Simply put, while information that does not become part of the judicial process is not governed by the open courts provision in our constitution.

Court records are defined by General Rule (GR) and include "any document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding." The definition of a court record includes the complaint (CR 4(b)(1)(i) and summons (CR 10(a)). Both of these court documents require a party bringing action into the court must be identified in the caption or title of the summons as well as in the caption or title of the complaint. In other words, the person being summoned into court has the right to know the identity of the person initiating the action.

RCW 42.56.540 requires that an affidavit be submitted to the court in order for the party to prove they have right to bring action in the court to enjoin the release of specific records they are named in or pertain to them. In these causes of action, the third parties' affidavits are signed using a false identity (Doe L – CP 699-131; Doe N – CP 703-706; Doe O – CP 708-710; Doe G - CP 3180-3183; Doe C – CP 1188-1191) or not signed at all (Doe D - CP 2903-2906). Without knowing the identity of the parties filing action against Zink to prevent the release of public records pursuant to RCW 42.56.540 the trial court has no

way to verify the parties are named in the record or that the record specifically pertains to them as it is required to do in order to enjoin public records.

Likewise, CR 23(a)(2-4). CR 17(a) requires that the trial court know the true identity of a litigant initiating action in or to determine whether that person(s) have right to bring suit or are representative of a class Specifically, the trial court, based on the declaration or affidavit on file in the court, must determine whether the party initiating action is the true party of interest (CW 17(a)) and has shown that the claims or defenses of the representative party(ies) are typical of the claims or defenses of the class and that the representative party(ies) will fairly and adequately protect the interests of the class. Without knowing the identity of the person filing to represent a class, a trial curt cannot make those determinations.

To read the affidavit requirements of RCW 42.56.540 and all certification pursuant to CR 23 without knowing the true identity of the classes representative requires a court to remove or add language to an unambiguous statute.

> If the language is not ambiguous, we give effect to its plain meaning. "If a statute is clear on its face, its meaning is to be derived from the language of the statute alone." Kilian v. Atkinson, 147 Wn.2d 16, 20, 50 P.3d 638 (2002) (citing State v. Keller, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001)). If a statute is ambiguous, we employ tools of statutory construction to ascertain its meaning. A statute is ambiguous if it is "'susceptible to two or more reasonable interpretations,' but 'a statute is not ambiguous merely because different interpretations are conceivable.'" Agrilink, 153 Wn.2d at 396 (quoting State v. Hahn, 83 Wn. App. 825, 831, 924 P.2d 392 (1996)). This court does not subject an unambiguous statute to statutory construction and has "declined to add language to an

> unambiguous statute even if it believes the Legislature intended something else but did not adequately express it." Kilian, 147 Wn.2d at 20 (citing Keller, 143 Wn.2d at 276; Wash. State Coalition for the Homeless v. Dep't of Soc. & Health Servs., 133 Wn.2d 894, 904, 949 P.2d 1291 (1997)). "Courts may not read into a statute matters that are not in it and may not create legislation under the guise of interpreting a statute." Kilian, 147 Wn.2d at 21 (footnote omitted) (citing Progressive Animal Welfare Soc'y v. Univ. of Wash., 114 Wn.2d 677, 688, 790 P.2d 604 (1990) and Associated Gen. Contractors of Wash. v. King County, 124 Wn.2d 855, 865, 881 P.2d 996 (1994)). Thus, when a statute is not ambiguous, only a plain language analysis of a statute is appropriate.

Cerrillo v. Esparza, 158 Wn.2d 194, ¶8, 42 P.3d 155 (2006). The court rules and our constitution are clear. Use of pseudonym is redaction and sealing of court records (GR 15(b)(4)(5). The complaint, summons, declarations and pleadings are court records (GR 31). Sealing of court records through use of pseudonym is only allowed after application of GR 15 and the Ishikawa Factors. It is not enough in our courts to say something is so without evidence and the ability to verify the facts presented.

In these causes of action, the only evidence submitted were unsigned declarations of the parties seeking to enjoin the records while representing a class of other similarly situated individuals without the court knowing the true identity of the class representative. Again, the trial court must be able to verify the evidence submitted and that the parties are in fact named in the requested records and representative of the classes. The trial courts failure to require litigant to identify themselves is error and an abuse of the trial courts discretion

and the proper remedy is to remand back to the trial court for proper application of GR 15 and the Ishikawa Factors.

9. Class Action Certification

Zink incorporates the argument concerning the trial court not knowing the true identity of the party requesting to be class representative into this argument. The trial court's findings, conclusions, and orders do not address the issue of whether the legislative scheme outlined under RCW 42.56.540 allows a court to certify a class of persons and thereby exempt all records pertaining to that class from production to a requester. This is error and an abuse of the Courts discretion.

The PRA controls in all questions of law.[26] The correct standard of review requires an analysis of RCW 42.56.540 to determine whether a person can form a Class and motion the court for exemption of an entire set of public records (blanket exemption of public records through class action), in this case SSOSA evaluations under the strict requirements of RCW 42.56.540. RCW 42.56.540 states:

> The examination of any specific public record may be enjoined if, upon **motion and affidavit by** an agency or its representative or **a person who is named in the record or to whom the record specifically pertains**, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would

[26] In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern. RCW 42.56.030.

> substantially and irreparably damage vital governmental functions. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice.

(*Id.*)(emphasis added). Assuming for the sake of this legal argument, Respondents are Level I, II and III sex offenders who are named in at least one of the requested records, respondents are not named in all of the records requested. RCW 42.56.540 is specific to a "**person** who is **named in the record** or to whom **the record specifically pertains**." RCW 42.56.540 specifically requires the person named in the record or to whom the record pertains **must file a motion and affidavit** to the court. Class action certification would make this requirement superfluous, creating a judicially created exemption; a violation of the separation of powers doctrine.

> [I]n PAWS II, we said that it did not make sense to imagine the legislature believed judges would be better custodians of open-ended exemptions because they lack the self-interest of agencies. The legislature's response to our opinion in Rosier makes clear that it does not want judges any more than agencies to be wielding broad and mal[l]eable exemptions. The legislature did not intend to entrust to ... judges the [power to imply] extremely broad and protean exemptions ... .125 Wn.2d at 259-60. Therefore, if the exemption is not found within the PRA itself, we will find an "other statute" exemption only when the legislature has made it explicitly clear that a specific record, or portions of it, is exempt or otherwise prohibited from production in response to a public records request.

Doe v. WSP, 185 Wn.2d 363, ¶10 (2016). By certifying a class of persons to enjoin any and all records of a specific classification and type the trial court is

creating an exemption where an exemption does not exist. Under the plain meaning of the legislative intent in RCW 42.56.540, the trial court erred in not identifying which records at issue in this cause of action contain the name(s) of the parties filing complaint, summons and affidavit. Instead the trial court determined that it has the authority to create a judicial exemption through class certification; exempting all Level I, II and III sex offenders SSOSA evaluation under the guise of a class action. This is an absurd reading of the plain meaning of RCW 42.56.540. The trial court abused its discretion when it determined and ordered that anonymous, completely unknown persons could enjoin the records of other persons under the strict requirements of RCW 42.56.540 and the trial court's order certifying a class of sex offenders whose identities are protected from disclosure to the public must be reversed.

Because the strict requirements of RCW 42.56.540 require that "a person" named in the record or to whom the record specifically pertains to enjoin that particular records and CR 23, and 17(a) require the court to know the identity of the person requesting to be appointed class representative, Zink does not argue in her opening brief that the proposed representatives are not representative of the classes. For instance, Doe D is a Level III offender. His situation would not be common to Level II offenders and there are no Level II offenders who came forward to file suit even after notification. Doe L-O likewise could not possible represent all Level I offenders since they were not all convicted of the same crime and some Level I offenders started out as Level III offenders while others now compliant have not always been compliant. Therefore, their claims can also not be typical.

10. Permanent Injunction

Respondents claim that Special Sex Offender Alternative Sentencing evaluations are mental health records and are exempt pursuant to Chapter 70.02 RCW because they are confidential treatment records. This is false. Pursuant to RCW 70.02.010(31) a "patient" is defined as an individual who receives or has received health care. RCW 9.94A.670 (13) clearly and unequivocally states that the SSOSA evaluator cannot be the sex offender's treatment provider or "any person who employs, is employed by, or shares profits with the person who examined the offender." (*Id.*). Although it may be that only a qualified health care professional with special training can evaluate a convicted sex offender for the purpose of sentencing, that evaluator may not be the treatment provider and the convicted offender is not their "patient."

Respondents claimed SSOSA evaluations must contain a proposed treatment plan (RCW 9.94A.670(3)(b)) so they are most certainly health records. While it is true that a proposed treatment plan must be included in a SSOSA evaluation in order for a court to consider alternative sentencing, the proposed treatment plan is merely a proposal for the trial court to consider in deciding whether to sentence the convicted sex offender under RCW 9.94A.507 or 9.94A.670 and is not the final treatment plan as established by the assigned treatment provider. The treatment provider actually providing psychosexual therapy under a SSOSA sentence must perform a new evaluation and finalize a treatment plan at the time treatment begins.

The SSOSA evaluation and proposed treatment plan submitted to a trial court for a decision on sentencing of a convicted sex offender is required to be

maintained as a public record in the official court of record and in the Prosecuting Attorney's Office for public access. RCW 9.94A.475 and .480(1). See RCW 9.94A.030(32) for a definition of a "most serious offense." SSOSA evaluations are required to be open and available to the public pursuant to statute and cannot be enjoined from release. The trial court's decision otherwise is error of law and must be reversed.

11. Sentencing Documents Are Not Health Related Records and RCW 70.02 Does Not Apply and Can't Be Used As An Exemption

Respondents argued to the court that Special Sex Offender Alternative Sentencing (SSOSA) and Special Sex Offender Disposition Alternative (SSODA) evaluations are mental health records and are exempt pursuant to Chapter 70.02 RCW because they are confidential treatment records. This is false. Pursuant to RCW 70.02.010(31) a "patient" is defined as an individual who receives or has received health care. RCW 9.94A.670 (13) clearly and unequivocally states that the SSOSA evaluator cannot be the sex offender's treatment provider or "any person who employs, is employed by, or shares profits with the person who examined the offender." (*Id.*). Although it may be that only a qualified health care professional with special training can evaluate a convicted sex offender for the purpose of sentencing, that evaluator may not be the treatment provider and the convicted offender is not their "patient."

The SSOSA and SSODA evaluation and proposed treatment plan submitted to a trial court by the State for a decision on sentencing of a convicted sex offender, whether a juvenile or an adult, is required to be maintained as a public

record in the official court of record and in the Prosecuting Attorney's Office for public access. RCW 9.94A.475 and .480(1). See RCW 9.94A.030(32) for a definition of a "most serious offense." SSOSA evaluations are required to be open and available to the public pursuant to statute and cannot be enjoined from release. The trial court's decision otherwise is error of law and must be reversed.

12. Criminal History Record Information – Conviction Records Must Be Released to the General Public under the Washington State Criminal Records Privacy Act

Records of criminal conviction must be available to the public under the Washington State Criminal Records Privacy Act. Conviction records may be disseminated without restriction. RCW 10.97.050(1). "Conviction record" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject. RCW 10.97.030(3). "Criminal history record information" means information contained in records collected by criminal justice agencies, other than courts, on individuals, consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittals by reason of insanity, dismissals based on lack of competency, sentences, correctional supervision, and release. RCW 10.97.030(1).

All records requested by Zink are records of conviction or sentencing which are required to be available for public inspection.

13. The Sentencing Reform Act of 1981 Mandates Release of Sentencing and Plea Agreement Information to Members of the General Public

Under the Sentencing Reform Act of 1981 our legislature mandated that:

> Any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes shall be made and retained as public records if the felony crime involves:
>
> (2) Any most serious offense as defined in this chapter..

RCW 9.94A.475(2). Does fall within the definition of RCW 4.75.030(32) as convicted sex offenders. Furthermore, SSODA evaluations fall within the scope of the requirements of RCW 9.94A (see RCW 9.94A.670(14).

Pursuant to Chapter 9.94A RCW, our legislature requires law enforcement agencies to maintain and disclose any and all recommended sentencing agreements or plea agreements and the sentences of convicted sex offenders must be maintained and accessible to the public. *Koenig v. Thurston County*, 175 Wn.2d 837, ¶31, 287 P.3d 523 (2012). A prosecutor often factors a SSOSA evaluation in negotiations with the defendants (*Id.* ¶25, *fn.* 6) and an evaluation is mandatory in order for a convicted sex offender to receive an alternative sentence (RCW 9.94A.670(3)). An alternative sentence allows a convicted sex offender to receive substantially reduced prison time in exchange for community supervision with mandatory treatment RCW 9.94A.670(4)-(5)(*Koenig.* ¶26).

Furthermore, SSOSA and SSODA evaluations are criminal history record information relating to an incident which has led to a conviction or other

disposition adverse to the subject RCW 10.97.030(3). The evaluations are used by the trial court to recommend a SSOSA sentence or discourage a court from imposing the sentencing alternative. The evaluation is a consequence directly incidental to a conviction and is a conviction record as defined by RCW 10.97.030 (see above).

Clearly, by legislative mandates, SSOSA and SSODA evaluation are in the court file and must also be maintained in the prosecutor's office. Does failed to meet their burden of proof that the requested evaluations are exempt , not in the public interest and that harm will occur (RCW 42.56.540. The trial courts order enjoining the records must be reversed.

14. Supreme Court Decision in *State v. A.G.S.* 182 Wn.2d 273, 278, 340 P.3d 830 (2014) Is Not Applicable to This Cause of Action

In enjoining the SSODA evaluation the trial court used the Supreme Courts decision in *State v. A.G.S.*, 182 Wn.2d 273, ¶2, 340 P.3d 830 (2014). Our Supreme Court noted that in the sentencing of AGS, the court ordered a Special Sex Offender Disposition Alternative (SSODA) evaluation at the behest of the State (*Id.* ¶2). At the same time AGS had a separate SSODA evaluation performed by an independent psychologist (¶2).

> The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. **The evaluator shall be selected by the party making the motion**. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

RCW 13.40.162(2)(c)(emphasis added). The victim received a copy of the State's SSOSA evaluation from the Prosecuting Attorney's Office. The parents of the victim requested a copy of the SSODA evaluation ordered and paid for by AGS. The question put before the Supreme Court was in which juvenile file should the SSODA evaluation, bought and paid for by AGS, be placed.

> Should a juvenile offender's SSODA evaluation be filed in the official juvenile court file and thus be available to the public?

(¶7). This is abundantly clear since the Court noted the court ordered SSODA evaluation had already been released to the parents. The AGS Court was solely discussing the SSOSA evaluation performed by a psychologist of AGS's choosing and provided independently by AGS to the trial court for consideration during sentencing. The AGS Court clearly identified the difference between the two documents by continually noting that there were two different and separate SSODA evaluations performed.

> The statute does not contain any specific provisions regarding who can conduct the assessment, but in this case, both SSODA evaluations were performed by independent psychologists.

State v. A.G.S., 182 Wn.2d 273, ¶9, 340 P.3d 830 (2014). Our Supreme Court determined that the SSODA evaluation ordered by AGS was not part of the official court file and was therefore exempt. This is not dispositive of this case. Zink is asking for the SSODA evaluation maintained by the trial court in the juvenile's court file and the prosecuting attorney's office which must be

available for public inspection and copying in the Prosecuting Attorney's Office as well as in the trial court. (RCW 9.94A.475 and .480).[27]

Although our Supreme Court has emphasized the importance of confidentiality of juvenile offender files in the possession of public agencies holding "[a]ll records related to a juvenile offender must be kept confidential unless they are part of the official juvenile court file or meet another statutory exemption (*State v. A.G.S.*, 833, 340 P.3d 830 (2014)). A Juvenile Court file must be open and available to the public for inspection and copying.

> "The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection...

RCW 13.50.050(2). Court ordered SSODA evaluations paid for by the people and used to sentence a juvenile offender are found in the court file as sentencing documents and must be available for public inspection unless the records are sealed. All juvenile records requested by Ms. Zink are found in the "juvenile court file" as required by RCW 9.94A.480 and must be open to public inspection. RCW 13.50.050(2). The trial court's decision to enjoin the SSODA evaluation was error and an abuse of discretion and must be reversed.

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[27] If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment. RCW 9.94A.670(14).

15. Supreme Court Decisions, Case Law Doctrine and the Weight of Stare Decisis

Zink made a request for non-exempt criminal sentencing documents (RCW 9.94A.475). Respondents argued that numerous trial courts across the State of Washington have enjoined the release of SSOSA evaluation in response to a request for access by Zink. Whether every trial court in the State of Washington finds SSOSA evaluations private and exempt pursuant to RCW 70.02, our Supreme Court has determined SSOSA evaluations are sentencing documents, are not exempt and must be released to a requesting member of the public. This mandate by our Supreme Court cannot simply be ignored and considered irrelevant.

Review under the PRA as previously discussed is de novo. Whether the issue of an SSOSA being a mental health record was brought up at the trial level or on appeal is irrelevant as the issue could have been brought before the Supreme Court without having gone through the trial court. A review of the briefs filed in *Koenig* (CP 2366-2549) as well as the dissents plea to the legislature to make SSOSA evaluations exempt clearly show that the issue was brought before the Supreme Court and that our Legislature chose not to make SSOSA evaluation exempt. The issue concerning whether SSOSA evaluation are exempt has already been decided and the trial court was required to follow case law mandates of our Supreme Court.

> As the Court of Last Resort, Supreme Court decisions are binding on all lower courts; including the Court of Appeals. It is a generally understood, that when a point has been settled by a decision of a higher court, it forms a precedent which is not afterwards to be

> departed from. The trial court must abide or adhere to decisions made by our Supreme Court in this case and not on other trial court decisions. It is not within this court's discretion under the doctrine of stare decisis to second guess or disregard a Supreme Court mandate.
>
> Stare decisis means, literally, "[t]o stand by things decided." BLACK'S LAW DICTIONARY 1443 (8th ed. 2004). It involves following rules laid down in previous judicial decisions unless they are found to contravene the ordinary principles of justice.

Davis v. Baugh Indus. Contractors, Inc. 159 Wn.2d 413, ¶22, 150 P.3d 545 (2007). [T]he decisions of the courts of last resort are held to be binding on all others. *State v. Ray*, 130 Wn.2d 673, 677, 926 P.2d 904 (1996).

> Stare decisis furthers unity in the system of justice, assuring that decisions by courts of last resort are reliably binding. State v. Ray , 130 Wn.2d 673 , 677, 926 P.2d 904 (1996); State ex rel. Wash. State Fin. Comm. v. Martin , 62 Wn.2d 645 , 665, 384 P.2d 833 (1963).
>
> We have recognized that without the stabilizing effect of stare decisis, "law could become subject to . . . the whims of current holders of judicial office." In re Rights to Waters of Stranger Creek , 77 Wn.2d 649 , 653, 466 P.2d 508 (1970). ...
>
> Continued adherence to precedent also reflects the important consideration that when a legal principle has been long established, it allows citizens to choose their courses of action with a reasonable expectation of future legal consequences. Crown Controls, Inc. v. Smiley , 110 Wn.2d 695 , 704-05, 756 P.2d 717 (1988). See also Stephen Markman, Precedent: Tension Between Continuity in the Law and the Perpetuation of Wrong Decisions , 8 TEX. REV. L. & POL. 283, 284 (2004) (suggesting factors for determining when the presumption favoring precedent may be overcome, including "consideration of the reliance interests of the people, all of whom must carry out their personal and business affairs within the constraints of the legal system").

Davis v. Baugh Indus. Contractors, Inc. 159 Wn.2d 413, ¶24-25, 150 P.3d 545 (2007)(emphasis added).

> Through stare decisis, the law has become a disciplined art--perhaps even a science--deriving balance, form and symmetry from this force which holds the components together. It makes for stability and permanence, and these, in turn, imply that a rule once declared is and shall be the law. Stare decisis likewise holds the courts of the land together, making them a system of justice, giving them unity and purpose, so that the decisions of the courts of last resort are held to be binding on all others.
>
> Without stare decisis, the law ceases to be a system; it becomes instead a formless mass of unrelated rules, policies, declarations and assertions--a kind of amorphous creed yielding to and wielded by them who administer it. Take away stare decisis, and what is left may have force, but it will not be law.

State v. Ray, 130 Wn.2d 673, 677, 926 P.2d 904 (1996)(quoting opinion given by Justice Hale in *State ex rel. State Fin. Comm. v. Martin*, 62 Wn.2d 645, 665-66, 384 P.2d 833 (1963)(emphasis added). The relevant facts of this case are that Ms. Zink requested sentencing documents (SSOSA evaluations); records of conviction required to be freely disseminated (RCW 10.97.050(1)). See also the Sentencing Reform Act of 1981 Chapter 9.94A RCW. The trial court's determination that the records were exempt despite the Supreme Court ruling was error and an abuse of discretion and must be reversed so that these public records are once again available to the public for public inspection.

VI. COSTS

The Zink's request this Court to award them fees and costs under RAP 14. Pursuant to RAP 14.1 the appellate court which accepts review and makes final determination (RAP 14.1(b)) decides costs in all cases (RAP 14.1(a)). As the substantially prevailing party in this cause of action, the Zinks respectfully request this Court to award them fees and costs for this appeal. See *Mount Adams Sch. Dist. v. Cook*, 150 Wn.2d 716, 727, 81 P.3d 111 (2003).

VII. PUBLICATION

Zink respectfully requests this court to publish the decisions made in this cause of action. Of paramount public concern is the issue of whether an agency has right under the PRA to notify third parties without a claimed exemption to prevent release of public records, whether SSOSA and SSODA evaluation must be disclosed, whether use of pseudonym is a sealing of court records regulated by GR 15 and our Supreme Court's decision in *Seattle Times v. Ishikawa*, whether an injunction preventing release of public records falls under the prevue of RCW 7.40 or 42.56.540, and whether or not Class Action of individuals can be certified to prevent the release of public records under the strict requirements of the PRA, specifically RCW 42.56.540 are questions of paramount importance to the public as they pertain to access to public records by the public in a reasonable amount of time.

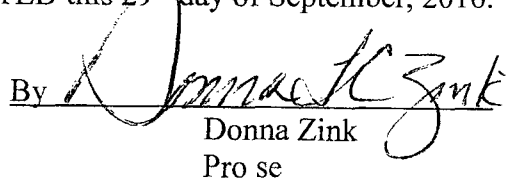
Requesters need to know what is at stake when RCW 42.56.540 is invoked in response to a request for access to public records under the PRA. Is it reasonable for a request to be delayed if an agency has no exemption yet notifies

third parties, delaying release and initiating legal action through proxy using class action and false identities? Finally, the issue of RCW 42.56.240(8) and whether an agency can notify convicted felons (in this case sex offenders) and tell them a request was made and provide the requesters contact information so that felons are able to contact and harass the requester. These issues are in need of immediate resolution by our upper courts.

VIII. CONCLUSION

All records enjoined under RCW 4.24.550 must be released pursuant to the decision in *Doe v. WSP*, 185 Wn.2d 363 (2016). For all the reasons stated, Zink respectfully requests this court to reverse the trial court on its decision to enjoin the SSOSA and SSODA evaluation as well as to reverse the trial court on the sealing of the records and remand back for adequate application of GR 15 and Ishikawa, decertify the class under RCW 42.56.540 and reverse the trial court on summary judgment dismissal of Zink's claims against PC.

RESPECTFULLY SUBMITTED this 29th day of September, 2016.

By 
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IX. CERTIFICATION OF SERVICE

I, Donna Zink, declare that on the 29th day of September, 2016, I did send a true and correct copy of appellant's "*Opening Brief of Appellant Donna Zink*" via e-mail service to:

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